U. S. Congress.

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THE DEBATES AND PROCEEDINGS

OF

THE SECOND SESSION

OF

THE THIRTY-SEVENTH CONGRESS.

BY JOHN C. RIVES.

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THE CONGRESSIONAL GLOBE.

THE OFFICIAL PROCEEDINGS OF CONGRESS, PUBLISHED BY JOHN C. RIVES, WASHINGTON, D. C.

THIRTY-SEVENTH CONGRESS, 2D SESSION. THURSDAY, FEBRUARY 27, 1862. NEW SERIES.....No. 61.

at the instigation of the malice and revenge, if you please, of any indiscreet, injudicious, fanatical person who may chance to be down there and have some vengeance to wreak upon somebody? Is he to designate the property of this man and that man, without reason or rule, and tell the commissioners, "take possession of it, and administer it for the benefit of the Government." Sir, if we pass this bill we are exposing every citizen of both these States to the will and caprice of every petty tyrant with epaulets upon his shoulders who may enter into the territory of either of these States, and who may, for any purpose, with reason or without reason, choose to designate the property of any man as property that ought to be seized upon and administered for the benefit of the Government.

Now, sir, I cannot vote for a bill that is—I mean no disrespect to any one when I say it—so crude, so ill digested as this bill is. While I fully concur with the gentleman in the propriety of legislating upon the subject; while I fully appreciate the reasons, and the momentous reasons that urge upon us action and speedy action, those very reasons urge upon us deliberate action, wise action, matured action; not an ill-digested bill that can never be executed if passed, and that will become a most potent engine of wrong and oppression.

I am as anxious to get hold of the property of rebels and traitors as any one can be; but I am not so anxious as to induce me totally to disregard the rights of those who may be in their midst that are as loyal in their hearts to-day as you or I. There is wheat growing among the tares in these southern States, and I am not willing to endanger that by ruthlessly plucking away the vicious weeds that surround it.

I do not intend, Mr. President, to go into any discussion on the merits of the bill. There are many other provisions that I think are as crude as this one; but I suggest this, in the very first section, as a reason why, in my opinion, this bill ought to go to the Committee on the Judiciary, that they may consider and perfect it. We cannot—I am sure we have not, if we can—have considered and appreciated the importance, the momentousness of the subject with which this bill undertakes to deal, and the difficulties that will surround us at every step of our progress in the execution of the best devised and best considered measure that we can give birth to. This is, in my judgment, one of the most difficult and oppressive problems that has been presented for our solution; and I do not feel disposed myself to vote for it upon the spur of the moment, without having time to give more than a very hasty perusal to the bill at my desk in this Chamber. Although nature may not wait, as the honorable Senator from Massachusetts says, her operations and her processes for the next three or four or five days, or a week if you choose, cannot materially embarrass this measure when it is perfected, when in a position to be executed; and it is far better that we should get it right in the beginning, than that we should pass it, and at the very onset of an attempt to execute it find that we are surrounded with difficulties that we cannot unravel, that we cannot cast off, and that we shall then have to begin and do our work all over again. We had better do it well in the beginning.

I am ready to vote for any bill that will take possession of the property of traitors and rebels wherever it is proper to take possession of it—wherever we lay our hands upon it. I may say, as I go along, that I do not desire to lay waste and desolate all the country, even of the States that are in rebellion against the Government. There are a great many loyal people there. We are under a higher obligation; the considerations that press upon us to take care of them and their interests are, if possible, more sacred than those that appeal to us for the protection of our constituents at home in the loyal States. They are suffering all the horrors, all the calamities, all the oppressions, all the desolations of this terrible and wicked war on their own soil, at their own hearthstones, under their own roof trees; and are we to come now with a bill like this, that embraces all and makes no exceptions, and add to all that they have even now endured at the hands of rebels and traitors; add to the oppressions of all that, the oppression of our measures? Are we to cast them off; and because they happen to be, by no fault of theirs, in rebel States, in the midst of rebels and traitors, where they cannot speak out in behalf of the Union and the Government; where they cannot efficiently lift a finger to strike for the Union and Government—are we, because they are thus surrounded, thus oppressed, thus afflicted, to cast them off entirely, pay no regard to their interests, and in our legislation make no discrimination between them and those who have brought upon the country all the disasters that it is now enduring? Mr. President, I am not willing to vote for a bill that casts good and bad, loyal and disloyal, all into the same lot and upon the same platform. I know that if we pass this bill we shall have occasion to repent it and to regret it, for it cannot be executed. Let it go to the Committee on the Judiciary and be perfected, and I shall be as ready to vote for it as anybody else.

Mr. HALE. If this war could be successfully prosecuted, and this rebellion crushed, and the rightful supremacy of the Constitution and laws restored without hurting anybody, I should be as willing to agree to it any one else; but I do not believe it can be so done. The objection which the Senator from Illinois makes to this bill is precisely analogous to that which I suggested when a bill was introduced for confiscating vessels owned partially by rebel owners. That bill provided for confiscating the whole vessel under such circumstances. I suggested that there might be loyal citizens owning shares, and that it would be unjust to seize their property. It was answered, and it was a sufficient answer with a majority of the Senate, that the interests of loyal owners might be cared for, and compensation made, but that the necessity of the Government compelled the confiscation of the vessel, though there might be some loyal owners of shares therein.

Mr. COLLAMER. I beg the gentleman's pardon; that was not exactly the answer. The answer was, that there was provision made in the bill that the Secretary of the Treasury might remit the penalty in relation to those persons who were loyal.

Mr. HALE. That is the very measure I intended to indicate. That was it; and the bill passed, confiscating the whole of every such vessel, and leaving a loyal part-owner to the remedy which has been suggested by the Senator from Vermont. Now, sir, this bill proposes only to take possession of the lands that are committed to the commissioners by the military authority. Suppose there should be, as I trust there are, some loyal men there who have been surrounded by rebels, and have had to abandon their lands and their negroes, and we have eaten up their corn, and left their servants to starve; will it be better to except them from the general provisions of the bill, or take the whole of these lands and leave the loyal owners, whose lands may be occupied, to such recompense as the justice and magnanimity of the Government will give them afterwards?

Mr. President, we cannot find precedents for every step that we are taking. I tell you that in this war, unprecedented, unforeseen, and uncalculated upon, we are not to follow precedents, but to make them—make them so that those who come after us, if they should ever be troubled with such a war as this, will find them to their hands. I think there is great force in the suggestion which was made by the honorable Senator from Massachusetts, that seed-time is upon us. It was one of the most prosaic suggestions that I ever heard him make, unembellished with classical quotations or poetical extracts. [Laughter.] It is a plain and simple natural truth, seed-time is upon us, and we must improve it, and if we cannot improve it in just exactly the way that might be matured by all the wisdom of the Senate, devoting the whole session to it, it is no answer to that pressing fact that seed-time is upon us and will soon be gone, and unless we improve it we shall have to join in the lamentation of the prophet, and say that "the harvest is passed, the summer is ended, and we are not saved." I think the bill is well prepared, very well. Why should we commit it to the Committee on the Judiciary? It came from one of the most luminous minds of that committee.

Mr. COLLAMER. It came from the Committee on Territories.

Mr. HALE. It came from the honorable Senator from Connecticut, [Mr. FOSTER.]

Mr. BROWNING. I think the Senator from New Hampshire is mistaken in supposing that the bill came from the Committee on the Judiciary.

Mr. HALE. I am not at all mistaken. I did not say that it came from the Committee on the Judiciary.

Mr. BROWNING. Then I misunderstood the Senator.

Mr. HALE. I said it came from one of the most luminous minds of the Committee on the Judiciary. It was referred to the Committee on Territories, and was not altered by that committee by the addition or change of a single letter. I think it has been matured enough, and I hope the Senate will not recommit it, but will pass upon it before the seed-time is gone.

Mr. FOSTER. I certainly feel a very strong interest in the question about which this bill is conversant, and am very desirous that this or a better measure should very speedily pass this and the other House of Congress. I hope, therefore, that the motion to recommit this bill will not prevail. I have heard no good reason for it. It would induce delay, and delay is the defeat of this measure and of any other measure to remedy the evil which this bill proposes to remedy. The only suggestion which the honorable Senator from Illinois makes in support of his complaint as to the crudities of the bill, is, that it uses the expression in the first section, "military authority," which he professes himself unable to understand, or at least to give to it any definite meaning. I do not claim to quote his language, but his idea. He does not know whether the military authority is to be considered as represented by the picket guard, as he walks backwards and forwards over a certain space on the lines, or whether it is represented by some intermediate authority between him and the President of the United States, who, he says, is the head of the military authority. I confess that I do not believe the Judiciary Committee can use a more appropriate term than "the military authority." It seems to me it is very easily understood, and not liable to be misunderstood. Nor do I see the danger which the honorable Senator suggests, that somebody—some fanatic—from spite or malice, may turn over some loyal man's plantation into the hands of commissioners appointed under this bill, and he thus be deprived of his property; and so the good and the loyal, together with the rebellious and disloyal, subjected to the tyranny of this bill, while devastation is spread over the country. It is a very lamentable idea. I certainly should go with the Senator from Illinois, at an humble distance, perhaps, behind him, in endeavoring to prevent any such terrible calamities from visiting any portion of our country. The object of this bill is to prevent, not to produce, ruin and devastation, which he, no more than I, deprecates. It is to save, not to destroy. For myself, I have no fears; I trust the Senator need have none, that the military authority will turn over into the hands of the commissioners of the United States any loyal man's property. Is there any danger from anything already done? Has General Sherman, who is in command of the forces in South Carolina, shown any disposition to play the fanatic, or to put the property of loyal men to improper uses? Is General Halleck, who is commanding in another department, exhibiting any disposition or desire to destroy or to confiscate what is called property, even in its most offensive sense, within the district which he commands? Is Flag-Officer Foote, in publishing a short proclamation to the inhabitants of Clarksville, in Tennessee, giving any indica-

tion that the property of loyal men is in danger from the military or naval authorities of the United States? Need the Senator fear, when, as he says, the President of the United States is the head of the military authority, that he will allow any man, because he has epaulets on his shoulders, to disturb the humblest loyal citizen in any portion of the rebellious States in the management of his property? I am not afraid of it, if the Senator is. I have not the slightest fear of it. I am willing to trust these authorities with the protection of the citizen; and this bill simply proposes to take possession of the property which is abandoned—left in such a condition that, unless we do take care of it, it will be unimproved and fall into decay and ruin, and waste and desolation be spread over the country. Besides preventing this, the bill proposes to provide for the population—more important, in my judgment, than the territory itself. It proposes to provide for those who will be in a perishing condition unless speedy means be afforded to protect and relieve them.

ORDER OF BUSINESS.

The VICE PRESIDENT. It becomes the duty of the Chair at this hour to call up the special order first assigned for to-day.

Mr. FOSTER. I am not going to detain the Senate by any remarks of mine. I thought I should show my friendship for the bill by saying nothing about it; but I hope its consideration may be continued a few minutes, in order that it may be disposed of. I move, therefore, to postpone the present and all prior orders for the purpose of continuing the consideration of this bill, at least for a very brief space. If it is likely to lead to a long discussion, I shall not press it now.

Mr. COLLAMER. I have no desire to prevent the Senator from Conneticut having his bill disposed of; but the special order referred to by the Chair is a bill in which I take some interest, and I do not want it to lose its place as a special order. If the time runs by, I understand that I lose my special order.

The VICE PRESIDENT. It became the duty of the Chair to call up the special order at this time; and upon the special order (which is the bill fixed for to-day on the motion of the Senator from Vermont) the Senator from Vermont is entitled to the floor. Therefore, the Senator from Connecticut is not in a position even to move to postpone the special order, unless the Senator from Vermont yields the floor to him.

Mr. COLLAMER. The effect of it is what troubles me. By yielding, do I not lose my special order entirely?

The VICE PRESIDENT. While the other is pending; but when the other bill is disposed of, the first question that will then come up will be the Senator's special order.

Mr. COLLAMER. But I should like to know whether by permitting the bill of the Senator from Connecticut to go on by consent, I lose my special order; or whether it will come up of course whenever his bill is finished.

The VICE PRESIDENT. The bill which has just been before the Senate may be continued by unanimous consent, subject to the Senator's motion to call up his special order at any time.

Mr. COLLAMER. I cannot get unanimous consent to anything.

The VICE PRESIDENT. The Senator does not understand the Chair. If the Senate will give unanimous consent to proceed with the discussion of the question which has been up this morning, subject to the motion of the Senator from Vermont at any time to call up his special order, it can be so proceeded with.

Mr. COLLAMER. I have no objection to that, if it is so understood.

Mr. TRUMBULL. There is another special order behind that, which I do not wish to have delayed.

The VICE PRESIDENT. The special order made on the motion of the Senator from Vermont is first in order to-day, having been first made.

Mr. TRUMBULL. I am aware of that; but the next special order is the bill we had up yesterday for the confiscation of the property of rebels, which I desire to keep before the Senate. Although I cannot object to taking up the bill of the Senator from Vermont, which is the first special order, I do object now to another matter coming in and postponing that, he still holding precedence. I hope that the Senate will take up his special order and dispose of it, and then, when the confiscation bill comes up, adhere to it until it is disposed of.

The VICE PRESIDENT. Perhaps it may be the duty of the Chair to correct a wrong impression of the Senator from Illinois. If the Senate proceed to the consideration of the special order made on motion of the Senator from Vermont and dispose of it, then the bill which has just been before the Senate will come up, being also a special order for this day, and preceding the one indicated by the Senator from Illinois. There are three special orders for this day; the one indicated by the Senator from Illinois is the third.

Mr. TRUMBULL. The subject under consideration is not a special order.

The VICE PRESIDENT. It is a special order for to-day.

Mr. TRUMBULL. I was not aware that it was made a special order.

The VICE PRESIDENT. There are three special orders for this day. This bill was called up, however, in the morning hour; but that does not deprive it of its character as a special order for to-day.

Mr. COLLAMER. I perceive that the more I concede, the more complicated it becomes with two or three other matters, and therefore I desire to proceed with the special order.

The VICE PRESIDENT. The special order, therefore, before the Senate is House bill No. 104.

Mr. HARRIS. I desire to inquire, for information, whether or not the Oregon case is not a privileged question, entitled to preference over either of these orders?

The VICE PRESIDENT. Not in the impression of the Chair.

Mr. HARRIS. I desire to say that I feel constrained to press that case whenever the rules of the Senate will allow.

The VICE PRESIDENT. The ruling of the Chair will be, that it will be the privilege of the Senator from New York, whenever the occasion shall occur, to make his motion. It will then become a privileged question; but these are special orders, and override that privileged question, and the Senator from Vermont is entitled to the floor upon House bill No. 104. When the Senator from Vermont shall have concluded his remarks, if the Senator from New York shall obtain the floor, it will be in order for him to move to postpone all prior orders for the purpose of taking up the question indicated.

Mr. HARRIS. I think I understand what my rights are.

INCREASE OF REPRESENTATIVES.

The Senate resumed the consideration of the bill (H. R. No. 104) fixing the number of members of the House of Representatives from and after the 3d of March, 1861, the pending question being on the amendment of Mr. COLLAMER to strike out, in the sixth and seventh lines, the words, "to be apportioned among the several States," and to insert:

The members added by this act to be assigned to the six States having the largest unrepresented fractions under the apportionment made.

Mr. COLLAMER. That amendment which was offered to the bill of the House in relation to the apportionment of Representatives was an amendment offered by myself. I now propose to withdraw that amendment and substitute a different one, which I send to the desk and desire may be read.

The Secretary read the amendment, to strike out all of the bill after the words "United States," in the fifth line, in the following words:

Shall be 239, to be apportioned among the several States according to the provisions of the act of May 23, 1850, entitled "An act providing for the taking of the seventh and subsequent censuses of the United States, and to fix the number of the members of the House of Representatives, and provide for their future apportionment among the several States."

And to insert in lieu thereof the following:

Shall be 241, and the eight additional members shall be assigned one each to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island.

So that the bill will then read:

That from and after the 3d day of March, 1863, the number of members of the House of Representatives of the Congress of the United States shall be 241, and the eight additional members shall be assigned one each to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island.

Mr. COLLAMER. Mr. President, although this is, in a considerable degree, a sort of arithmetical measure, still I have a good deal of confidence that I can satisfy almost every gentleman in this Senate of the equity and justice, as well as of the constitutionality of the amendment which I have proposed, if they will give me a little attention. It is true that I have no considerable feeling on this subject in relation to my own State, because whether the original bill is passed without amendment or with the amendment, it is all the same to my State. It will make no difference to her; but still I wish the amendment to be made. It is no small matter for a State to lose a third part of its representation; and still more is it an important matter for a State to lose half of it. By the apportionment, as made under the act of 1850, my State loses one third of its whole representation. I think it would rather startle a gentleman from New York or from Ohio or from Illinois, if the proposition was made that they should lose one third of their whole representation. They would think there was some importance in it. This subject is of just as much importance as that to my State; and it is just as important as losing one half of their whole representation to the State of Rhode Island or the State of Minnesota. It involves nothing less than that. They will not only lose their representation, but all those advantages that are connected with it; for instance, having a cadet at West Point, and having midshipmen in the Naval School. It is true they had but two in Rhode Island and three in Vermont any way; but to lose a third part of that is a matter of some importance. We are to lose also the same proportion in the college of electors for President and Vice President. These are to us matters of a good deal of importance; and I take it that gentlemen will bear with me a little if I occupy time as they think unnecessarily. My apology, if it needs an apology, will be found in the importance of the measure.

I wish, first, to call attention to the expression in the Constitution in relation to the apportionment of Representatives:

"Representatives and direct taxes shall be apportioned among the several States, which may be included in this Union, according to their respective numbers."

It then goes on to state how these numbers are to be ascertained: by taking all the free people and three fifths of the slaves to ascertain their representative population, and by that, direct taxes and Representatives are to be apportioned, according to the respective numbers of the people in the States. Now, direct taxes are apportioned with arithmetical certainty. They are apportioned by the numbers of the people, and of course there are no fractions left about it; every man is counted; and the taxes are paid according to their entire number in each State, entirely regardless of the subject of apportionment, without having any fractions. There can be no fractions. In saying that the Representatives shall be apportioned according to the population of the respective States, I take it, the design was to approximate as near as possible to that equality. This being the great point on which I choose to make my remarks, I think it important to restate it: that the Representatives shall be apportioned among the States according to their population as near as practicable. I believe I can show to any attentive man that the apportionment, as provided for in the act of 1850, in all its bearings, does not carry out that provision of the Constitution fairly, justly, and, as I think, according to its true meaning and import. I wish to call attention to that apportionment act. I will read it:

"That from and after the 3d day of March, 1853, the House of Representatives shall be composed of 233 members, to be apportioned among the several States in the manner directed in the next section of this act.

"That so soon as the next and each subsequent enumeration of the inhabitants of the several States, directed by the Constitution of the United States to be taken, shall be completed and returned to the office of the Department of the Interior, it shall be the duty of the Secretary of the Interior to ascertain the aggregate representative population of the United States"—

It then goes on to repeat the mode of getting it according to the Constitution, and then it provides—

"which aggregate population he shall divide by the number 233, and the product"—

which, I think, should be quotient in division; but the result—

"of such division, rejecting any fraction of an unit, if any

such remain, shall be the ratio, or rule of apportionment, of Representatives among the several States under such enumeration."

When he has divided by 233, the result, the quotient which is produced, shall be the rule of apportionment of Representatives. That is what I shall call the Representative ratio:

"And the said Secretary of the Department of the Interior shall then proceed, in the same manner, to ascertain the representative population of each State, and to divide the whole number of the representative population of each State by the ratio already determined by him, as above directed; and the product of this last division shall be the number of Representatives apportioned to such State under the then last enumeration: *Provided*, That the loss in the number of members caused by the fractions remaining in the several States, on the division of the population thereof, shall be compensated for by assigning to so many States having the largest fractions, one additional member each for its fraction as may be necessary to make the whole number of Representatives 233."

Now, sir, the taking of a number to divide by for the purpose of ascertaining the representative ratio is entirely arbitrary; but when you have taken that and made your dividend and ascertained what the representative ratio of the Union would be, you give to each State as many members as they have under that ratio in their number. That they are entitled to. That is the ratio of representation; and if they come up to that ratio they are entitled to one; if they come up to it twice, they are entitled to two; and so on as long as they can by their numbers entitle themselves to a member by that ratio.

Mr. President, by what power and right and principle is it that you give Representatives to fractions at all? I take it, it is because in giving them to the fractions you approximate nearer to the representative ratio. Then you ought to give representation to each State so long as by giving it they will be nearer to the representative ratio than they will be by withholding it. That is the great point—great in my estimation—which I wish to make; that when you go to give it to a fraction, you have no right to stop short of this rule; that is, you will give it to every State when by giving it to her she will come nearer to the representative ratio than she will by withholding it. I think no other just rule can be found. This law of 1850 does not give that. It gives representation to the States having fractions until it gets down to a certain number, 233, and stops right there. It does not proceed to give it to the States who by getting it will have their representation nearest to the ratio; but it stops arbitrarily at that number. There is the injustice of it; there is the iniquity of it; and I believe there is no member of this Senate who will give his attention to the subject for twenty minutes, that will not subscribe to the perfect correctness of my principle. It cannot be answered in my estimation.

This bill as passed by the House of Representatives would not effect what they really desire. I am fully authorized to state that. The difficulty was, they meant to give representation to six more of the unrepresented fractions to save their number, 239; but they framed their bill in such a way that they said the number should be 239, and should be apportioned according to the act of 1850. The moment you take that act, you take for your first divisor 239 instead of 233, as was taken in making the dividend under the act of 1850; and you throw the fractions upon an entirely new set of States by it. That was not what they intended; it was not what they desired. I made a proposition of amendment to correct that; but upon a full investigation of the subject I have come to the conclusion which I have now stated, and which I am sure gentlemen can understand if they desire to understand it. I know, if gentlemen are set upon the idea that the act of 1850 cannot be varied from, and that it is the clear and settled policy of this Government, then it is in vain to talk about it; but I have been endeavoring to show, and I believe I have shown to every man who chooses to attend to it, that the act of 1850 is unjust and wrong in its apportionment.

Under the apportionment made under the census of 1860 no less than fifteen States have a member accorded to them by the Secretary for fractions, and then it arbitrarily stops because you had got up to 233 under the act, whereas, as I again repeat, it should have gone on giving it to fractions so long as by giving it you could have made the States nearer to the representative ratio than by withholding it. That is what should have been done. The amendment which I have sent to the table does that. It is the result of a calculation to which I desire to call attention. Take the bill as passed by the House of Representatives, that they should have their number 239, and then take the census of 1860, and divide the representative population by 239, as their bill proposes; that will ascertain your fractions. Then go on and give Representatives to every State, according to that representative ratio produced by that result, and then give to each State having the fractions, if by giving them you will make them nearer to the ratio than they would be by withholding them, and it will give to just those States which I have enumerated in my amendment, taking from none. That is all the effect of it; and that is the effect of the arithmetical calculation which has been carefully made, and which I have here.

I am sensible that gentlemen cannot go over a set of figures here with me with care, and I do not expect they will; but I want to state certain results in that calculation. Take the whole representative population by the census of 1860, and divide it by 239, the number stated in the bill, and it will make the representative ratio 123,717. Then go on and give to each State that has that number in it one Representative, and that has that number twice in it two Representatives, and so on through them; and then take those that have fractions and give to them, as I again repeat, a Representative, when by giving it, you would make them nearer the Representative ratio than by withholding it, and you will include those very States that I have mentioned. I have each State here cast by itself. I will take some of those States, and show what the result is. There will be fifteen States entitled to Representatives as having the largest fractions. Then come these eight States that will be entitled by this rule that I have proposed. One of them, for instance, is my own State, which is uppermost and first in my mind, of course, and pretty much last in the minds of others. The State of Vermont, by the apportionment made under the act of 1850, by the last census, would be entitled to two Representatives; that is, we would lose one. Now, if Vermont had but two Representatives, each one of them would represent 157,558 people by this class. The whole number to entitle to representation being 123,717, the State would get two Representatives, and each of the two would represent 157,558. Each of the two would have 33,841 above and beyond the representative ratio. Now suppose you give them another. They would then have three Representatives, and each of the three would represent 105,000, and they would be 18,678 each short of the ratio. In the first instance, with two Representatives, they would be 33,841 above it; and in the other, with three members, they would be but 18,678 below it. They would be more than 16,000 nearer to the representative ratio by giving them one additional Representative than by allowing them but two. I think this is a pretty strong case. Why should you withhold from them that which will make them much nearer to the due ratio of apportionment, and give it to others that are really not nearer to it, because you come down to certain numbers?

Take the State of Rhode Island. Rhode Island has 174,621 people. By the whole representative apportionment the ratio would give her but one member. Then you come to the fractions. Now if she has but one, that man would represent 50,900 people more than the representative ratio. Suppose you give her two. If you give Rhode Island two, each will represent 87,000 people, and they will be but 36,000 away from the average, whereas by the other mode they would be 50,000 away from the average. There is a difference of 14,000, and a fraction over. They are nearer to the representative ratio by 14,000 when you give them two Representatives than when you give them but one. This is true, though not to the same extent, of all the States I have enumerated in the amendment.

Take, for instance, the State of Minnesota. That State has 172,000 people. One Representative now appointed to them would represent 48,300 people more than the ratio. If you give Minnesota two, they would each represent 37,000 less than the ratio; that is, they would be 9,000 and a fraction nearer to the ratio with two than with one. Then why not give them two? Is it not, according to their population and agreeably to the Constitution, more nearly, and much more nearly, the ratio than the other? It is not necessary that I should go over each of the States I have enumerated here. In all instances the fractions are nearer with the Representative than without, and the amendment covers all the cases where they are nearer.

Mr. President, when I have thus stated the principle, and thus shown its application in the case, it seems to me I have done all that is necessary. It is true, however, that this proposition would increase the number of the House from 239, as they now have, to 241; that is, it adds two members. It does that for equality of representation. Congress, at every time they have made an apportionment, have always exercised their power over the mode of regulating the representation of fractions. Sometimes they have given the representation to a particular State—at other times not—but they have always exercised the power to produce equality of representation. That is all that is asked of it now.

But it may be said you propose to increase the House to 241. Is there anything exceptional in that? It is the necessary result of the bill they themselves have passed, making the number 239, worked out by what I regard as the clear and fair construction of the Constitution. But what if it does increase the number of Representatives? We have within the last ten years increased our population by 8,000,000. The representation in the House will not be anything like as large in proportion to the people as it is now, or rather was at the last census. It will be very much smaller in proportion than it has been for ten years past, or than it ever was, except under the first apportionment by the Constitution. It is a very grave question whether that representation ought not to be very much increased any way. A large part of our most experienced statesmen are of opinion, and have been long of the opinion, and many of them have urged it very much, especially Mr. John Quincy Adams, that the House ought to be very much larger; that it would be much more safe to the community; much less liable to any combinations and confederacies against the interests of the people; but I am not about to enter into that.

The proposition which I have made is simply the result of the principles that I have stated, and only adds two members to the House. You cannot withhold those members without doing most direct injustice, for instance, to Minnesota and to Rhode Island particularly. To those two States you cannot do justice in any other way, unless you go by the principle I have stated, by giving Representatives to them because they come the nearest to the ratio. I do not think it worth while to occupy further time on the subject. If there are objections made to this amendment, I reserve to myself the right, and shall feel it to be my duty, as far as in me lies, to answer them. Otherwise, I shall submit it to the Senate as it stands.

The PRESIDING OFFICER, (Mr. FOSTER in the chair.) The question is on the amendment submitted by the Senator from Vermont.

Mr. HARRIS. If this bill is to be further discussed, I shall feel constrained to move its postponement; but if a vote can be taken upon it, I have no objection to its being done.

The amendment was agreed to.

The amendment was ordered to be engrossed, and the bill was ordered to a third reading; it was read the third time, and passed.

SENATOR FROM OREGON.

Mr. TRUMBULL. I now move to proceed to the consideration of Senate bill No. 151, which is the confiscation bill that we had up yesterday. I am sorry to have to insist on this bill as against the case of the Senator from Oregon; but it has been made a special order, and if it is crowded out by that case, it goes over, and I do not know when we may get it up again. It is a very important public measure, now under consideration, having been discussed yesterday, and I must insist that we proceed with it.

Mr. HARRIS. I must also insist on the disposition of the Oregon case, and if the Senator from Illinois insists upon his case we must submit it to the decision of the Senate. I hope, sir, that that bill will not be taken up, but that we shall proceed to the disposal of the Oregon case, which has been, as every Senator knows, too long delayed. I hope, therefore, the motion of the Senator from Illinois will not prevail.

The PRESIDING OFFICER. Does the Senator from New York interpose a motion for the taking up of the subject indicated by him?

Mr. HARRIS. If it be in order, I will move that the Oregon case be taken up, and that all prior orders be postponed.

The PRESIDING OFFICER. In the opinion of the Chair, that, being a privileged question, is entitled to be put to the Senate prior to the motion of the Senator from Illinois. It is in the power of the Senate, of course, to dispose of the question of priority by their votes; but that will be the first question put to the Senate.

Mr. SUMNER. One of the most important questions now before Congress is the bill of the Senator from Illinois. It is practical as well as important. Its consideration was commenced yesterday. A Senator took the floor in order to address the Senate upon it, and I think it is important that it should be kept before the Senate until it is decided. It is a measure with regard to which there has been too much delay. I hope the Senate, therefore, will not take up anything else until it has acted upon that.

Mr. CARLILE. Congress has been in session now, sir, nearly three months. One of the States of this Union has been during the whole of that period, one of the most interesting in our history, deprived of one half of its representation. It is due to that State that she should be informed by the action of this body whether the Senator she has sent here is to be admitted or not as one of her representatives. If admitted, she is entitled to his voice, and to be heard through him upon this floor. If not admitted, it is due to her that she should have an early opportunity of selecting some one who may prove acceptable to the Senate. I trust, therefore, that the Senate will adopt the motion of the Senator from New York, and in order that those of us who desire to extend an early hearing to the State of Oregon may have an opportunity of recording our names, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. It is moved that the Senate take up for consideration the report of the Judiciary Committee on the application of Mr. Stark to be admitted as a Senator from Oregon; and upon that question the Senator from Virginia demands the yeas and nays.

The yeas and nays were ordered.

Mr. DOOLITTLE. I desire to say one word. I protest, on a mere question as to the preference of business, against our being placed in the position of being antagonistic to one measure or another measure, because we vote to give preference to one or the other in its determination in the Senate. The case of Mr. Stark has been discussed one or two days, and we are right in the middle of the discussion. The bill of the Senator from Illinois, to confiscate property, has been discussed a day or two; and the question which was brought in by the Senator from Ohio [Mr. WADE] on the bill of the honorable Senator from Connecticut, who now occupies the chair, [Mr. FOSTER,] has been discussed one or two mornings, and we are right in the middle of the discussion of all three. My judgment is that the one we have discussed first, we had better finish and have done with it, and then take up another.

The Secretary proceeded to call the roll, and Mr. ANTHONY answered to his name.

Mr. TRUMBULL. We are losing so much time——

The PRESIDING OFFICER. Discussion is too late, the call of the roll having commenced, and a Senator having answered.

Mr. TRUMBULL. I will ask the unanimous consent of the Senate that the Senator from Virginia may withdraw the call for the yeas and nays. I will agree to let the Oregon case come up, and let us finish that, and then I shall insist upon the other subject being considered.

Mr. CARLILE. Of course I will agree to that.

The PRESIDING OFFICER. The call for the yeas and nays can be withdrawn by unanimous consent. The Chair hears no objection. The question is on the motion of the Senator from New York.

The motion was agreed to; and the Senate resumed the consideration of the following resolution reported from the Committee on the Judiciary:

Resolved, That Benjamin Stark, of Oregon, appointed a Senator of that State by the Governor thereof, is entitled to take the constitutional oath of office.

The PRESIDING OFFICER. The pending question is on the motion of the Senator from New Hampshire to recommit the resolution and report to the Committee on the Judiciary.

Mr. HALE. At the request of several friends around me, I will withdraw that motion, with the consent of the Senate.

The PRESIDING OFFICER. The motion to recommit is withdrawn, and the question is upon the resolution of the committee.

Mr. SUMNER. Now, Mr. President, the amendment that I proposed the other day comes up in order, and I offer this as a substitute for that. It is the original amendment in a new draft. It is to strike out, as I proposed the other day, after the word "thereof," in the second line of the resolution, the residue in the following words, "is entitled to take the constitutional oath of office," and to insert in lieu thereof the following:

Now charged with disloyalty by the affidavits of many citizens of Oregon, and also by a letter addressed to the Secretary of State and signed by many citizens of Oregon, some of whom hold public trusts under the United States, is not entitled to take the constitutional oath of office without a previous investigation into the truth of the charge.

So that the resolution would then read:

Resolved, That Benjamin Stark, of Oregon, appointed a Senator of that State by the Governor thereof, now charged with disloyalty by the affidavits of many citizens of Oregon, and also by a letter addressed to the Secretary of State, and signed by many citizens of Oregon, some of whom hold public trusts under the United States, is not entitled to take the constitutional oath of office without a previous investigation into the truth of the charge.

On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. SUMNER. I am unwilling to speak again in this debate. So reluctant am I, that nothing but a sense of duty could make me break silence. But I am determined that this Chamber of high trust, so carefully guarded by the Constitution, shall not be opened to disloyalty, if any argument, any suggestion, or any persuasion of mine can prevent it.

Of course, in this debate, something is assumed. It is simply this: that the evidence touching the loyalty of the claimant is not valueless; that it is entitled to attention; that it affords *probable cause*, if I may adopt the phrase of the Roman law, for distrust; that it is enough, simply, to put a party on the defensive. If this be the case; if all these affidavits, verified by the certificate so numerously signed, are not put aside as baseless; then the Senate must inquire into the validity of the charge. The result of the inquiry may be one way or another; but the inquiry must be made. It is an abandonment of present duty not to make the inquiry, and it is an abandonment of an essential right of self-defense not to assert the power.

I have listened to the various arguments urged to induce the Senate to disarm itself as they have been presented by able Senators. I have listened to the Senator from Maine, [Mr. FESSENDEN,] to the Senator from Wisconsin, [Mr. HOWE,] and I have felt, as I listened, new confidence in the constitutional power of the Senate to protect itself at all times against disloyalty, and in the duty of the Senate to exercise this constitutional power at any time, early or late, in its completest discretion.

But it is said—and I believe the Senator from Maine first presented this argument which has been urged so strongly by the Senator from Wisconsin—that if we reject the present claimant, Oregon will be without a representative. And if we expel him, will not Oregon be without a representative? Surely this is no reason why we should hesitate in either case. I, too, desire to secure a representative for Oregon; but I know full well that a disloyal representative is no representative; or rather, sir, it is worse than no representative. In insisting upon such a representative, you sacrifice substance to form; you abandon the living principle and content yourselves with the dead letter; you keep the word of promise to the ear, and break it to the heart; you offer to the people of Oregon a stone, when they demand bread. In the name of the people of Oregon, whose wishes are manifest in the papers now before us, I protest against the pretension that they can be represented by a disloyal person. Misrepresentation is not and never can be representation.

But it is said—and I believe the Senator from Maine made that argument—that the evidence against the claimant, if sustained, might justify expulsion; but it will not justify a refusal to admit him to take the oath.

Mr. FESSENDEN. The Senator will state my position as I put it; and that was, if the same language and declarations were proved as coming from Mr. Stark while a Senator, I thought they might justify his expulsion.

Mr. SUMNER. The Senator says that if the same language had been used while he was a Senator it might justify expulsion. That is enough, sir; and yet the Senator argues that it will not justify the Senate at this stage in refusing to open its doors to him. In plain terms, the Senate may pronounce the stigma of expulsion, but not the judgment of exclusion. A similar absurdity would be to say, that in private life a certain offense would justify us in kicking an intruder down stairs, but would not justify us in refusing him admission to our house. It is enough to state this case. Nothing can be clearer in the light of reason—and I say also of the Constitution—than that it is the duty of the Senate to meet disloyalty on the threshold; to say to it, wherever it first shows itself, that this Chamber is no place for it. The ancient Hebrew pictured his desolation when he said that he could not go forth to meet his enemy at the gate. Desolate will be the Senate when it cannot meet disloyalty at the gate.

But the Senator from Maine has complained, and the Senator from Vermont [Mr. COLLAMER] joined him in this complaint, that the claimant is not allowed to *purge* himself by his oath; thus using a technical phrase of the law, applicable chiefly to suspected persons. Not allowed to *purge* himself! Rather say, sir, not allowed to *perjure* himself. For, in view of the testimony now on your table, the inference is unhappily too strong, that in any oath to support the Constitution, he must perjure himself. I say this with pain, and without any desire to prejudge the case; but simply because the facts, as they appear without contradiction, leave no opportunity for any other conclusion.

But since complaint is made by learned lawyers, that the claimant is not allowed to purge himself, I desire to adduce a legal analogy on this question. It is well known that, by the common law, a person is not permitted to take an oath who does not believe in God. This is the general principle; but when we look at the application of this principle we shall see how completely it illustrates the present case. If a person is known to have openly and recently declared his disbelief, he will not be permitted to purge himself by his oath, for the reason that his own declarations are decisive. Here is the text on this point, in the authoritative work of Mr. Greenleaf on the law of evidence:

"It should here be observed that defect of religious faith is *never presumed*."

I would add, as defect of political faith is never presumed:

"On the contrary, the law presumes that every man brought up in a Christian land, where God is generally acknowledged, does believe in Him and fear Him. The charity of its judgment is extended alike to all."

Precisely as when the claimant comes to this body and offers to take the oath, the charity of the Constitution supposes him to be loyal; but it does not go further, and refuse to consider the evidence of disloyalty. The authority then proceeds:

"The burden of proof is not on the party adducing the witness to prove that he is a believer; but it is on the objecting party to prove that he is not. Neither does the law presume that any man is a hypocrite. On the contrary, it presumes him to be what he professes himself to be, whether atheist or Christian; and the state of a man's opinions, as well as the sanity of his mind, being once proved, is, as we have already seen, presumed to continue unchanged till the contrary is shown. The state of his religious belief, at the time he is offered as a witness, is the fact to be ascertained; and this is presumed to be the common faith of the country, unless the objector can prove that it is not. The ordinary mode of showing this is by evidence of his declarations previously made to others, the person himself not being interrogated."

I apply this principle precisely to the question in hand: "the ordinary mode of showing this is by evidence of his declarations previously made to others"—precisely as it is now proposed to show the sentiments of the present claimant. Then, in a note, this authority proceeds, as follows:

"It has been questioned, whether the evidence of his declarations ought not to be confined to a period shortly anterior to the time of proving them, so that no change of opinion might be presumed. (Brock *vs.* Milligan, 1 Wilcox, 126, per Wood, J.) The witness himself is never questioned in *modern* practice as to his religious belief; though formerly it was otherwise. (1 Swift's Dig., 739; 5 Mason,

19; American Jurist, vol. 4, p. 79, note.) It is not allowed, even after he has been sworn. (The Queen's case, 2 B. and B., 284.) Not because it is a question tending to disgrace him; but because it would be a personal scrutiny into the state of his faith and conscience, foreign to the spirit of our institutions. No man is obliged to avow his belief; but if he voluntarily does avow it, there is no reason why the avowal should not be proved, like any other fact. The truth and sincerity of the avowal, and the continuance of the belief thus avowed, are presumed, and very justly, too, till they are disproved. If his opinions have been subsequently changed, this change will generally, if not always, be provable in the same mode. (Attwood *vs.* Welton, 7 Conn., 66; Curtis *vs.* Strong, 4 Day, 51; Swift's Evid., 48-50; Mr. Christian's note to 3 Bl. Comm., 369; 1 Phil. Evid., 18; Commonwealth *vs.* Bacheler, 4 Am. Jurist, 79, note.) If the change of opinion is very recent, this furnishes no good ground to admit the witness himself to declare it; because of the greater inconvenience, which would result from thus opening a door to fraud, than from adhering to the rule requiring other evidence of this fact. The old cases, in which the witness himself was questioned as to his belief, have on this point been *overruled*. (See Christian's note to 3 Bl. Comm., 369, note 30.) The law, therefore, is not reduced to any absurdity in this matter. It exercises no inquisitorial power; neither does it resort to secondary or hearsay evidence. If the witness is objected to, it asks third persons to testify, whether he has declared his disbelief in God, and in a future state of rewards and punishments, &c. Of this fact they are as good witnesses as he could be; and the testimony is primary and direct."

And here again is additional illustration from the great work of Phillips on Evidence:

"After the incompetency of the witness from defect of religious belief is satisfactorily established by proof of his declarations out of court, he will not be permitted to deny or explain such declarations or his opinions, or to state his recantation of them, when called to be sworn. But he may be restored to his competency, on giving satisfactory proof of a change of opinion before the trial, so as to repel any presumption arising from his previous declarations of infidelity."

I do not wish to press this illustration too far. But it seems to me clear that, if you accept the declarations of a person as decisive with regard to his religious belief they must be accepted as equally decisive with regard to his political belief. An oath to support the Constitution presupposes political belief, as much as the oath itself presupposes religious belief.

Pardon me, sir; but I cannot refrain from astonishment that Senators, learned lawyers, should be willing to treat the oath to support the Constitution as an oath of *purgation*—an oath of *defecation*—an oath of *purification*—an oath by which a suspected person may cleanse himself—an oath by which an evil spirit may be cast out. Sir, it is no such thing. Such is not the oath of the Constitution. By that oath the accepted Senator dedicates himself solemnly to the Constitution. Sir, it is not an oath of purgation, as Senators insist, but an oath of consecration. It is to such an oath that may be fitly applied the words of the ancients when they spoke of the oath as "the greatest pledge of faith among men."

I do not wish to be carried off into technicalities; but since Senators have insisted that this oath is merely of purgation, I desire to add that, according to early writers, it is well known that there are two forms of oaths, one technically styled "the oath of expurgation," sometimes called the *ex officio* oath, by which persons were bound to answer all questions, even to the extent of accusing themselves or intimate friends. This oath was much used and abused in the days of Queen Elizabeth. At an earlier day it was administered to an Archbishop of York charged with murder; and no less than one hundred compurgators were sworn with him. The other is what is called the "promissory oath," which is the oath of the sovereign, the magistrate, the judge, the Senator. Such an oath is widely different from the oath by which a person clears himself from suspicion, or cleanses his name.

There is another oath, which is familiarly known by its peculiar name; I mean the *custom-house oath*. You all know something of this oath, which is taken hastily, without solemnity or question, and is now an acknowledged nuisance and mockery, against which people petition Congress. By such oaths, "sworn is the tongue, but unsworn is the mind." With such oaths as seed, surely perjury is the natural harvest. If Senators who have spoken in this debate can have their own way, you will degrade the solemn oath of the Constitution to the same class, and make it the seed of a similar harvest.

For myself, I am determined, so far as my vote or voice can go, that the oath shall mean something, and that it shall be kept solemn and above suspicion. It shall not be degraded to be an oath of purgation or a custom-house oath; but shall be in all simplicity—what it is regarded by the Constitution—an oath of office, in itself the pure and truthful expression of an assured loyalty. I say, sir, of an assured loyalty; not of a loyalty which is yet in question, which is yet doubtful, so that people testify against it. And where there is evidence seriously impeaching the loyalty of a claimant, he shall not, with my consent, be permitted to take that oath until the impeachment has been removed. Sir, I am not insensible to the attractions of comedy, when well performed on the stage; but there is a place for everything, and I am unwilling to sit in my seat here and witness the comedy that is now proposed. The Senate is to resolve itself into a theater, under the management of grave Senators; the Senator from New York, the Senator from Maine, and other Senators, and we are to see the play proceed. The claimant from Oregon will cross the floor, and under honorable escort approach the desk, take the oath, and kiss the book. The title of the play is borrowed from a forgotten old English drama, "Treason Made Easy; or, An Oath no Great Thing."

Permit me to say, that it ill becomes the Senate at this moment to do or to forbear anything by which the standard of loyalty can be lowered. If it justly expects loyalty from others—if it requires loyalty in its soldiers and officers—surely it ought to set an example of that loyalty in its own members. Toward itself, at least, it cannot be too austere in its requirements. Wherever about us disloyalty shows itself—whether in the Senate or in its lobby; whether already intrenched here, or struggling to enter in; whether planted at these desks, or still standing at the gate—we have one and the same duty to perform. We must inquire into its character; and if it be found unworthy of trust, we must chastise it or exclude it from the Senate. This is the least we can do.

Mr. McDOUGALL. I had hoped that this debate had nearly closed; and I rise in my place now simply for the purpose of expressing my astonishment at the course of remark of the Senator from Massachusetts. I regard his speech, the language in which he has couched it, and the sentiments he has expressed as containing a most unwarrantable assault upon a person who has no right to respond to him on this floor, and most unwarrantable for that. It is the gentleman's privilege here to express his opinions, it is true; but it seems to me the Senator might have clothed his assault in something like courteous language, and left out his denunciations, considering particularly the fact that the gentlemen whom he was assaulting had no privilege of responding.

Mr. SUMNER. Mr. President, I have spoken of the facts now before the Senate; and I at former times in this debate have stated that I did not wish to prejudge this case. I asked for an investigation into the facts; and the very remarks of the Senator who has just taken his seat are an all-sufficient argument in favor of what I have asked. The Senator says that I have used unjustifiable language with reference to the claimant from Oregon. What is the language that I have used that the Senator regards as unjustifiable?

Mr. McDOUGALL. That his purging himself, for instance, would be perjury. An assault of that kind ought not to be made here, in this Senate, or anywhere else, except upon very sufficient ground. The Senator had said in his place, with the papers before him, that he did not know how he should vote when the question should come before him.

Mr. SUMNER. I did not hear the first part of the remark of the Senator.

Mr. McDOUGALL. The Senator said that this oath of purgation would be perjury, in his judgment, on the part of Mr. Stark; so that he has judged him finally. The Senator said in his place, having the report of the committee before him, and all the facts presented to any Senator, that he had not arrived at a conclusion; that he would not make up his mind except upon full investigation. Now, with no other testimony—and I will say without any testimony; without anything that bears the color of testimony, such as is known in courts of justice—he has pronounced him as a man who, if he took the oath to support the Constitution of the United States, would be guilty of perjury.

Mr. SUMNER. The Senator has not stated my position accurately. I do not doubt his desire to do me justice. I certainly have no desire to do him other than justice. I said this: Senators have urged that the claimant should be admitted to take this oath in order to purge himself. I wished to expose the inadequacy of that suggestion. I wished to show that the oath to support the Constitution of the United States is not an oath of purgation. In exposing that, I repeated the language, "an oath to purge himself;" and I said, rather, if the argument on the other side is to hold good, an oath to perjure himself; and that I repeat. Sir, it will be just as I have said, because you have on your table there uncontradicted testimony tending to show that the claimant is not loyal to this Government; and therefore do I say that if now, without any investigation—that was my argument—without any inquiry, you allow the claimant to come forward to take that oath, having that testimony before you, you do allow him to come forward to perjure himself. I do not say that the claimant from Oregon will perjure himself. I have said before that I do not prejudge this case. I do not know that it will not be in the power of the claimant when this case comes up for inquiry, if the Senate allows it to be looked into, to show that all the testimony in regard to his loyalty is baseless; but there is the testimony—testimony tending to show that the claimant is not loyal to the Constitution of the United States. Therefore do I say, in the face of that uncontradicted testimony—and I pray the Senator from California to mark the limitation of what I say—in the face of that uncontradicted testimony, if you allow the claimant to come forward to take that oath, you allow him to come forward and take all the responsibilities which I have suggested.

Sir, I felt it my duty to make that suggestion, because I desire that the Senate should see precisely where they stand. I desire the Senate to be aware that if they undertake to say that in the face of numerous affidavits, vouched by numerous letters from the most respectable citizens of the State, solemnly declaring that the claimant has uttered disloyal sentiments to this Government; that, notwithstanding all that, he shall be admitted to go forward and take the oath to support the Constitution of the United States, I say the Senate solemnly make themselves parties to the disloyalty with which he is charged; and I go still further, and say that they undertake to enact a comedy. Sir, to it I do not wish to be a party. I enjoy a comedy. I like to sit on the benches and see the well-graced actor as he moves upon the stage; but I do not wish to see a claimant with such testimony against him as you have now on your table allowed to cross this floor and take the oath to support the Constitution of the United States, and the Senate declaring that it has no power at this moment to make any inquiry into the question whether that oath is valid or not. That is my answer to the remark of the Senator from California.

Now, again, I desire to say in all frankness, and I pray the Senator to accept my statement, that I shall approach the consideration of this question, if the Senate choose to go into the inquiry, absolutely uncommitted, without any final opinion formed upon it. I have not even carefully studied the actual evidence before us. I looked at it enough to see that, in the face of that evidence, it is impossible for this Senate to allow him to take that oath without saying that it regarded the oath as valueless, that it regarded perjury as of very little account, and that it was willing to adopt the title of the old English play, "Treason Made Easy; or, An Oath no Great Thing."

Mr. DAVIS. Having said a few words upon this subject when it was before the Senate on a former day, I feel myself somewhat constrained, in order to explain my vote, to add a few words upon the present occasion. I do not doubt that the Senate have the right to investigate the question of a gentleman's loyalty to the Government when he presents himself to be sworn in as a Senator; and that is the position which I maintained in the remarks that I made on a former day.

It has been said, Mr. President, by some of the members of the Senate, that there is probably as much evidence before the Senate upon the question of fact of the loyalty of the gentleman from Oregon now, as will be got before the Senate, and the whole of the evidence being before the Senate, it is as well prepared to act upon the question of

loyalty as a question of fact now, as it will be at any future time. Considering the remoteness of the locality whence the testimony must be obtained, I come to the conclusion, that all the facts and all the evidence bearing upon the question of the loyalty of the gentleman from Oregon that could be got before the Senate at the present session of Congress are now before the Senate. Now, the question with me is this: maintaining the right of the Senate to inquire into the fact of the loyalty of the gentleman, and to refuse to receive him, if they find beyond all reasonable doubt that he is so disloyal as to disqualify him from a proper discharge of his duties as a Senator, conceding that position of constitutional law, the point then arises upon the testimony now before the Senate, is it sufficient to establish the fact of his disloyalty so clearly, so conclusively to the minds of the Senate, as to authorize them to exclude him from his seat on this floor. I say, Mr. President, it does not satisfy my mind upon that proposition.

What is a Senator's loyalty? I might turn to the Senator from Massachusetts and ask him, what is his loyalty to the Constitution? If that question was propounded to half the lawyers of this Union, I doubt whether it would not be responded to largely that he was not loyal to the Constitution of the United States. What does loyalty to the Constitution mean? It means to support it in its principle as it is written; to uphold it. Well, sir, if I see the Senator from Massachusetts, or any other Senator here, willing to trample down the Constitution into the dust in some of its most important principles and provisions, would not that state of the case authorize me to come to the conclusion that he himself was disloyal to the Constitution, and more so than these *ex parte* illegal affidavits prove the gentleman from Oregon to be?

Mr. President, we had a case involving this principle before the Senate a few weeks ago; and in the discussion and adjudgment of that case, the principle seemed to be generally conceded, that an abstract opinion, however disloyal it might be, unaccompanied by an overt act, was not sufficient to expel a member from the Senate. That was my own proposition and my own principle, and I now adhere to it; I maintain it against all odds. A man to commit the crime of treason must perform an overt act. No opinions however disloyal to the Government; no opinions however treasonable to the United States, unaccompanied by an overt act, constitute treason. Sir, there must be action and overt acts to constitute treason; and short of overt acts with the intent to commit treason, there is no treason at all. I can take the resolutions of the gentleman from Massachusetts, offered upon this floor, and I can prove from them to the Supreme Court of the United States, or to any lawyer of ability and independence and integrity, that his opinions are more untrue and more destructive to the principles of the Constitution and the Government of the United States, or equally so, than any opinions attributed even by this *ex parte* proof to the gentleman from Oregon. The gentleman from Massachusetts will differ from me in my estimate of his loyalty to the Constitution; so probably will a majority of the Senate; I do not know; but whether he differs from me or not, that is my judgment of the relative state of the case between him and the gentleman who applies to be admitted to a seat on this floor as a representative of the State of Oregon.

Well, what does it prove? It proves that there may be a contrariety of opinion about such matters, and that as to the particular loyalty or disloyalty of different gentlemen, there may be a difference of judgment and of opinion. What is it that constitutes disloyalty? What is it that constitutes a sufficient amount of disloyalty to exclude a member from the Senate, either upon expulsion or when he applies to qualify as a member of the body? What facts amount to disloyalty? By what principles or definitions will you identify it? How will you ascertain it? I lay down this proposition with perfect confidence, that when a gentleman presents himself to the Senate, and asks to be admitted as a Senator upon this floor, and you seek to exclude him for previously declared opinions, you must make out the clearest, the most satisfactory and conclusive case against him. Indeed, I take a stronger position than that; I say that no amount of opinions, however definite and precise and strong, that may have been expressed, although they may be proven, not by *ex parte* affidavits taken from the enemies of the party who applies for admission, but by testimony taken according to the strictest forms of legal evidence, unless they establish overt action in connection with his disloyal and treasonable principles, would be sufficient to expel him or to deny him the privilege of taking the oath when he came with the proper credentials to represent his State as a member of this body.

The honorable gentleman from Massachusetts had better beware what measures he puts up here. He may make a sort of bed of Procrustes, and he may be called upon to lie upon that bed himself in the vicissitudes of senatorial and political parties. I remember that a few years ago there was another and antagonistic party in possession of this Government that were as haughty, as domineering, and as proscriptive as the gentleman from Massachusetts is; but a change has come over the country, and they have been thrown down from their seats of power. It may be so with him, and in a very short time, too, for there is much change in life, and especially in political life. I warn the gentleman to be cautious what sort of political rules and measures he puts up, lest he himself be made some of these days to submit to them, and he may find himself wanting in coming up to the measure that he prescribes.

Mr. President, I have said thus much in explanation of the vote that I intend to give. I am sorry that I said a word on a former day in relation to this subject. If I had not, and did not intend to vote in a manner seemingly different from the position which I then assumed, (though there is really no difference at all,) I should not now have said a word, but have silently voted.

Mr. COWAN. Mr. President, I have so far upon this case refrained from expressing any opinion at all, and I am very free to say that I have done so for the reason that I had no guide in the forming of such an opinion. If it is to be the rule of this body that men are to be expelled from it, kept out of it, by the mere caprice of the sitting members, I fear that we are in that position which has been so eloquently described by the Senator from Kentucky, where no one of us may know at what time the blow may fall on his own head. I had supposed that in all matters of this kind, where facts were to be ascertained and determined, tribunals were established by law for their ascertainment and determination; and that when the proper tribunal had found the facts, there was an end of it, and nobody else had a right to inquire further. A familiar illustration of this may serve.

When my brother KING, who sits at my side, is elected a Senator from New York, I take it that that establishes everything which is necessary in relation to him, except, perhaps, the questions of his age, how long he had been a citizen, and where he lived at the time. Certainly it would be a very singular objection if I were to observe here that he ought to be kept out because he was not a man of sufficient talent, genius, or learning. It would be equally absurd if I were to object on the score that he was not a man of good moral character. So, I take it, if I were to object on the score of his want of loyalty to the country, he would very properly say to me, "Sir, if you will attend to the concerns of Pennsylvania, it is more than likely that New York will be able to attend to her own affairs."

Here, in this case, the State of Oregon, through her constituted authorities, has appointed Mr. Stark a member of this body, and he proposes to qualify himself by taking the necessary oath. Now, what further can we require? It is not denied, I understand, that he is of proper age; that he has been nine years a citizen of the United States, and that he is at the present time, and was at the time he was appointed, an inhabitant of the State of Oregon. What further have we to do? Can we review the decision of Oregon upon the question raised here? Are we to determine Mr. Stark's capacity other than as to his constitutional qualifications. Can we say that he is not wise enough, that he is not religious enough, or that he is not loyal enough? To my mind, the thing wears an air of absurdity; and, as the Senator from Massachusetts delights in comedy, loves to see the great actors, while he sits upon the benches of the pit or parquette, the boxes or gallery, as the case may be, I should think he would have improved this comedy very much if he had moved, before we considered this case, that we should go into executive session, because it looks to me very much like sitting on the confirmation of Mr. Stark the same as though his name had been sent to us upon an appointment from the President.

If that is to be the rule of this body, if we are to inquire as to all these things which are *dehors* the Constitution, and which are unknown to the law, I should like some gentleman to answer the question, what is disloyalty? I know what treason is. That is a term known—well defined by the law; and when I am called upon to determine a case involving it, I have something to guide me. But what is disloyalty? Is it that a man does not feel kindly towards this Administration? Is it that he does not feel kindly towards our Constitution? What is it? Is it to consist in mere verbal utterances, without overt acts as a proof of it? I should like very much to hear the honorable Senator from Massachusetts, who talks so much about disloyalty, give us somethihg like a legal definition of it, wherein it consists, how it is limited, bounded, and defined.

Mr. SUMNER. The Senator appeals to me.

Mr. COWAN. I do.

Mr. SUMNER. I have in my hand the report of the Judiciary Committee, containing a letter addressed to Hon. William H. Seward, Secretary of State, and signed by William H. Rector, superintendent of Indian affairs for Oregon, William C. Johnson, member of the State central committee, E. B. Comlon, Indian agent, A. B. Clough, Levi Anderson, Colburn Barrell, Henry Failing, John S. White, W. H. Bambart, S. G. Reed, H. W. Corbett, chairman of the Republican State central committee, Simeon Francis, and Samuel E. Barr, being thirteen names in all; and all of these gentlemen in this paper addressed to the Secretary of State, make the following averment of their own knowledge:

"Mr. Stark, who is a resident here, and personally known to us all, has been for the past twelve months an ardent advocate of the cause of the rebellious States. He has openly avowed his sympathies with the South, declaring the Government disrupted, and openly expressing his admiration for the constitution of the confederated States, and advocating the absorption of the loyal States of the Union in the southern confederacy under that constitution as the only means of restoring peace."

And now the Senator asks me for a definition of disloyalty. To that inquiry I reply categorically precisely on the facts before us, and I say that if that statement thus authenticated by these thirteen citizens of Oregon be true, then is the present claimant a disloyal man; and further I say that those facts in every respect, beyond all question, beyond every peradventure, constitute disloyalty, disloyalty with regard to which there can be no question, and which if, when presented as it now is to the Senate, this body shall fail to sit in judgment upon, it will solemnly stultify itself before the world. That is my reply to the Senator.

Mr. HOWARD. If the gentleman from Pennsylvania will pardon me, I will take leave to call his attention to some further evidence in the case.

Mr. COWAN. Certainly.

Mr. HOWARD. I allude to what is to be found on page 7 of the same report, in which a sworn witness testifies as follows:

"That in the month of February, 1861, he heard said Benjamin Stark make use of the following language in substance at the post office in the city of Portland: 'If there is to be any war between the North and South all my property is for sale at fifty cents on the dollar, and I will go and help the *South* fight. The palmetto flag is my flag. The southern confederacy is the only legal government in existence; that the United States Government is broken up; that Jeff Davis is fighting in a good cause, and it will be impossible to defeat him.'"

Mr. CARLILE. What is the name of that man?

Mr. HOWARD. Wesley C. Hull.

Mr. COWAN. Mr. President, I asked for an egg and received a stone. I wanted a definition; I was treated to an example. Now, I am just as wide as I was when I started. What is the definition of the word disloyalty—what does it mean? Does it mean openly talking against the United States? If that is the meaning of it, say so. Or does it mean offering to sell your property for half price?

Mr. HOWARD. Offering to fight.

Mr. COWAN. Does it mean, then, in an offer to go and help the enemy to fight? All I want is the definition; I want something to guide me. I have

no particular leaning one way or the other here; but I do think that when a man is to be kept away from his rights, and deprived of them, he should be deprived by law, and that that law should be written down; that he should know it; that everybody should know it. You cannot deprive him of a right unless you do it by law; nor can you punish him unless you do it by law. Now, where is there anything in the world, in the shape of a law, which has made this kind of speaking, or this kind of offering, unlawful? Everybody knows it is exceedingly imprudent, and mischievous, and unfortunate—nobody denies that; but still the question remains, whether it has ever been declared unlawful, and whether we are to declare it so now. If we are, I am as willing to abide by it as anybody; but I want it definitely written down, so that we can be guided hereafter by it.

In other words, Mr. President, I do not want your seat here, nor mine, nor that of any other member, to depend upon the caprice of a majority of my fellows. You, sir, are in the same position, I suppose, that we are. After the whole people of the United States have decided upon your qualifications, and you come into this Senate to take your seat upon the chair there, are we to arrogate to ourselves the right to review their decision and determine upon your qualifications, not constitutional qualifications, but such qualifications as we in our wisdom may fancy you ought to have? Surely this never happened in any deliberative assembly before. Surely it must be the offspring of these excited times. And if there is anything we should guard against, if we wish to preserve the integrity of the country, and the integrity of its institutions, we ought to avoid these excessive measures, these new doctrines.

Mr. SUMNER. Does the Senator want an answer?

Mr. COWAN. Yes, sir.

Mr. SUMNER. The Senator put a question; he asked whether it would be for the Senate to sit in judgment on the qualifications of the Vice President when he comes forward to take the oath. Does the Constitution make the Senate the judge of the qualifications or of the election of the Vice President? It makes the Senate the judge of the qualifications and of the elections of its own members, and it is in the exercise of that power that I insist that the Senate must, at this moment, sit in judgment on the claimant from Oregon.

Mr. COWAN. Then I answer the honorable Senator from Massachusetts, by telling him that the qualifications of a Senator of the United States are set forth in this book, (the Constitution,) and that he has no right to add a single jot or tittle to them one way or the other; nobody anywhere on the earth has that right. These qualifications are put down in this book. Not satisfied with the constitutional qualifications, he proposes to go outside, and set up his own standard by which to measure those who come here to take seats.

Mr. McDOUGALL. The Senator will allow me to suggest that, in judging of the qualifications of Senators, the Constitution simply means that the Senate shall ascertain the fact whether they have the qualifications prescribed by that instrument. The Senate, in their authority to judge of the qualifications of a member, in the first instance, may inquire into the fact whether he has the constitutional qualifications, but no further.

Mr. COWAN. I suppose that since the formation of the Constitution down to this present speaking, nobody has ever had a doubt of the meaning of the Constitution in this respect. We are the judges of the election of the members of this body. Why? Because we are supposed to be impartial. If it be questioned as to which of two men has a majority of the Legislature of Wisconsin, for example, we decide. We are the judges of the election; and, I suppose, from a parity of reasoning, we are also the judges of an appointment by the Governor. Beyond that, we are the judges of the qualifications of the Senator—not his qualifications as to intellect, not his qualifications as to morality; not his qualifications as to any particular religious or political belief, but his constitutional qualifications. Somebody may get up and say "He is too young; he is not thirty years of age;" we try that question, and, therefore, we are to judge of it. Another may object and say "He has not been in the country nine years." Albert Gallatin, from my neighborhood, was once prevented from taking his seat in the Senate because at the time he offered himself he had not been nine years a citizen of the United States. He came from Switzerland. So, too, if it be objected that, at the time of his appointment, he was not an inhabitant of the State he proposes to represent, we are to try that. But beyond the subjects mentioned in the Constitution, we have no authority whatever; and to assume or to attempt to assume authority outside of that is to strike a blow at the Constitution, and a worse blow than gentlemen who are continually lauding it in their speeches suppose admitting men of doubtful loyalty would be.

Mr. DOOLITTLE. Before my honorable friend concludes I desire to ask him a single question, as this subject may have been under his consideration, he being one of the committee. My question is, whether, if the gentleman from Oregon be admitted to be sworn, and if the fact be that previous to his being sworn in he has been a traitor to the United States, can we, after he is sworn, then raise a question and expel him from the seat because he has been a traitor before we admit him, or must we only expel him for some act of treason or disloyalty committed after he has been admitted as a Senator?

Mr. COWAN. I suppose I am entitled to the same privilege that a judge would be entitled to under these circumstances, and that I may be allowed to say that when that case arises I will decide it. It is not here yet. It is enough for us to determine that which we have in hand. The question here, as I think, is whether Mr. Stark has the proper constitutional qualifications to be a Senator; whether he is regularly appointed; whether he is willing to take the oath to sustain the Constitution of the United States? If it shall turn out next week or next year that he has been at some time heretofore a traitor, a murderer, or what not, I have a very simple way for solving that question. There is the law, there is the court; why not indict and try him? We may punish a member here for disorderly behavior, if he becomes so troublesome as to prevent the transaction of the ordinary business of the Senate. With the concurrence of two thirds, if he becomes so bad that punishment will not effect his reformation, we have a right to expel him. I am aware that that last clause has been declared a substantive one, and was taken advantage of in the Senate, at a very early period, to expel a member for other improprieties than those properly falling within the phrase "disorderly behavior."

I am rather inclined to think that it was improper at the time, and a stretch of the meaning of that section which may hereafter occasion difficulty, if it be persisted in. We should stand upon the simple rules of the law as we find them. I suppose a Senator has no more immunity for his crimes than anybody else. If one of us should commit a crime, I do not see any reason why we should not be taken into court and treated precisely in the same way as the humblest citizen, and I think that is the right way, and then we avoid these questions. If, on the other hand, we do not commit crime, if we only do those things which by the common consent of everybody all of us have a right to do, we are not amenable. The law does not pretend to punish everything that is wrong; but it makes the just allowance that all have failings and imperfections, nay, even sins and transgressions—and by the governmental compact these shall not be accounted crimes or misdemeanors, and no man is to be arraigned for them. I suppose a Senator has not any more immunity than anybody else, and that he has the same right to the exempted offenses that the people outside have. If we violate the law, and pass the boundaries fixed by it, then punish us as other people.

Mr. WILMOT. Mr. President, I suppose it is proper to come back again to the question, which I understand to be this: The gentleman from Oregon presents himself here claiming a seat as a Senator; he is met upon the threshold by representations from very respectable sources in his own State, declaring his disloyalty. The point is, whether we shall admit him without investigating that matter. It may be proper to attempt a definition of disloyalty, as it is called for by my colleague. If I shall say that it is unfaithfulness to the country and to the Constitution, he may require a definition of that; but substituting the word "unfaithfulness" for "disloyalty," he understands it—every gentleman understands it. It is infidelity to the country, sympathizing with and adhering to and supporting its enemies, not by overt acts which constitute treason, but by open expressions of sympathy and adherence and support. We are not now trying the question of the loyalty of the Senator from Oregon; we are merely determining when we shall enter upon that question. My colleague, and other Senators here, say they will enter upon it, if ever, after he shall have been admitted to a seat; then they will try the question of whether he be a loyal man or whether he be not. If I understand, that is the position they take.

Now, sir, would it not be a farce to admit to a seat in this body an acknowledged disloyal man; a man that every one of us was ready to pronounce disloyal, unfaithful to the country and to his obligations as a citizen; to permit him to be sworn, and then to turn him out? It most certainly would, in my judgment. There can be no reasonable objection to trying the question of his loyalty or disloyalty here when he presents himself. This is not like the House of Representatives. That is a body that is disorganized every two years; for lengthy periods of time, it has no organized existence; and if every member of the House of Representatives were to be met by the same objection, and it were first to be tried, the House could never be organized. This body, however, is in permanent organization; it is never disorganized, and hence the distinction between the action of the two Houses is a clear one, and a very proper one. A gentleman presents himself here to be sworn as a Senator; he is met by representations of his disloyalty. Now, suppose the claimant to this seat were admitted to this floor, and he should, as a Senator in this body, assert what these respectable gentlemen say he asserted in Oregon, would you permit him to continue to sit here? I imagine not; I imagine that not a member of this body would permit him to sit here longer under such circumstances. The simple question is, when will you inquire into the fact? We do not by the vote on the pending proposition pronounce him disloyal; we know nothing about it, except from the representations which are made to us; and we propose now, in the very outset, to inquire into the fact; and if it turns out to be true that he is disloyal, that he is unfaithful to the country and to the Constitution, we then propose to refuse him a seat in this body. Certainly, it seems to me entirely proper that we should do so. If he were admitted here, and his disloyalty were made perfectly manifest and clear, if he declared here in the Senate the sentiments which it is represented that he proclaimed in Oregon, most certainly the Senate would expel him; there can be no doubt of it. Then are we to admit a man for the purpose of going through the form of his expulsion? My colleague says we do not try the religious qualifications of a man; we do not try his intellectual qualifications——

Mr. COWAN. Will my colleague allow me to ask him whether there was any motion made in the Senate to expel Jefferson Davis, Robert Toombs, and divers other gentlemen who talked infinitely more mischievous talk than all that is alleged against this gentleman?

Mr. WILMOT. The Senate then had really no power to enforce any such expulsion.

Mr. COWAN. It seems to me that it was the duty of somebody to try.

Mr. WILMOT. My impression is that some motion was made with that view; but it matters not. When the Senate was powerless to carry out its purpose of expulsion, the fact that it was not done furnishes certainly no argument that the Senate has no power to do it. Are we to be the victims of any and every man's disloyalty on this floor? Is every man here privileged to rise in the Senate and declare that in his judgment ours is not a Government, that the true Government of this country is the government of the confederated States, that Jefferson Davis is its true President, and that he stands ready to sacrifice his life and his property in the maintenance and support of that government? Is any man at liberty to stand up here and say that? If he is I have misconstrued entirely the organization of this body and the duty of its members.

Now, sir, as to the constitutional test. My colleague says that we do not try the intellectual capacity of the candidate. Surely not; neither at this

nor any other time do we try it; we are never privileged to enter upon it. Nor do we subject him to any religious test either now or at any other time. For aught I know it may be made perfectly clear that the Senator from Oregon is entitled to his seat; but what I contend for is that if he be disloyal, if he be not entitled to his seat, or if there be any question as to this point, we may now enter upon the inquiry of his loyalty or disloyalty; that this is the proper time; that it would be a perfect farce to admit him to a seat on this floor, then institute an inquiry as to his loyalty, find out that he was disloyal, and then expel him.

Mr. CARLILE. I do not intend, Mr. President, to detain the Senate by anything like an extended argument in this case. After the able and unanswerable argument addressed to the Senate by the Senator from Wisconsin [Mr. HOWE] the other day, it would be, in my opinion, a work of supererogation. But, sir, I desire, after having given mature reflection for the government of my own vote in this matter, to say that I have arrived at the conclusion that the Senate has no power to do that which we are called upon by gentlemen who oppose the qualification of the Senator from Oregon to do. It is a question, in fact, to assert the power of the Senate to exclude from representation any State that may not choose to select a representative who may be agreeable to a majority of the Senate. That is the naked power that we are called upon to assert—one, I venture to say, that would do more to overthrow the character of our Government, and destroy the rights of the people and of the States under the Constitution, than any single act it is in the power of this body to perform. And in order to sustain such a proposition, gentlemen resort to cases, which they put upon the spur of the moment, that never could occur to embarrass the Senate. The question was put by the Senator from New Hampshire, [Mr. CLARK,] the other day, when I had occasion to submit a few remarks to the body, what could be done if his State should be so unfortunate as to select as a representative here a horse-thief, not knowing him to be one at the time the selection or appointment was made. Sir, I take it for granted that that State of my friend has laws upon her statute-book which would enable her to take from this Chamber and try one who had been guilty of such an offense, and punish him, and thus relieve her and the Senate from being disgraced by his remaining longer upon this floor.

Mr. CLARK. Let me say to the honorable Senator that he might be taken and punished, but that would not vacate his seat.

Mr. CARLILE. When he is suffering the punishment visited upon him by his State for the violation of her laws, he is not here, according to the argument of the gentleman from New Hampshire and those who agree with him, to embarrass the Administration in the conduct of the Government, or to give aid and comfort to any of the enemies of the Government.

Mr. TRUMBULL. Will the Senator from Virginia allow me to ask him a question?

Mr. CARLILE. Certainly.

Mr. TRUMBULL. Take the case which the Senator puts; suppose that a person elected a Senator was indicted for larceny, and tried and convicted before reaching his seat in the Senate, and sentenced to imprisonment, and therefore was not here to take his seat, which he would let him have under his doctrine if he were here——

Mr. CARLILE. No, sir.

Mr. TRUMBULL. If he were not here, I should like to know if the State of New Hampshire is to go unrepresented while he serves his time in the penitentiary?

Mr. CARLILE. If I am not mistaken, I understood the Senator from Illinois to state the other day that Congress had passed a law excluding from office those who were convicted of such offenses.

Mr. TRUMBULL. Not such offenses, but some offenses.

Mr. CARLILE. If there is no law excluding persons from seats in this body for the commission of crime, and you can indulge the violent presumption that the authorities of the States of this Union would select such persons to represent them here, I think it is high time that the Senator from Illinois, as chairman of the Judiciary Committee, should introduce such a bill and have it enacted into a law.

Mr. SHERMAN. With the permission of my friend, I will inform him that it has been settled in England, it has been settled in almost every deliberative body I have ever read of, that that body may expel one of its members for a crime committed ten years ago. The proposition which Senators are now discussing, is not a proposition that is correct. It has been settled in England, in the House of Commons and House of Peers, it has been settled in almost every deliberative body, that that body may expel a member for an offense committed years before his election. There are many precedents of the kind which I can show.

Mr. CARLILE. Mr. President——

Mr. TRUMBULL and Mr. McDOUGALL rose.

Mr. CARLILE. I must object to these interruptions. I do not intend to detain the Senate but a moment or two, and while I am disposed to indulge all courtesy to every Senator, I claim at least the benefit of a few moments that I intend to occupy for myself.

The Senator from Wisconsin [Mr. DOOLITTLE] put to the Senator from Pennsylvania, [Mr. COWAN,] a question as to our power to expel the Senator from Oregon after his admission, for anything done before his appointment. I say the "Senator from Oregon," for I maintain that he is a Senator to all intents and purposes, just as much as he will be after his qualification. It is merely made necessary by the Constitution to enable him to enter upon the discharge of the duties of his office as a Senator, that he shall take an oath to support the Constitution, and that is the constitutional test to determine his loyalty. Suppose, says the Senator from Wisconsin, [Mr. DOOLITTLE,] he shall be proven to be a traitor? Then, sir, he will not sit in the Senate long, and he will be tried, I trust, and hung under the law as a traitor, so that there can be no danger to the institutions of this country from the case put by the Senator.

But, sir, look at the monstrous proposition that is contended for here. There are thirty-four States in this Union, sixty-eight Senators; thirty-five is a quorum; eighteen is a majority of a quorum; and you put it, by the establishment of this precedent, in the power of eighteen Senators to exclude thirty-three from seats upon this floor. Well might the Senator from Wisconsin [Mr. HOWE] remark, that there is not a State of this Union to-day that would incorporate the provision contended for by Senators on the other side of this question into any constitution that they would adopt for their government. One third of this body goes out every two years. Eighteen Senators remaining can forever perpetuate their power, and exclude the third who have a right to come in, under the monstrous doctrine contended for here, in this the year 1862, after this body has been in operation near three quarters of a century.

What is loyalty, has been well asked. What is disloyalty as gentlemen contend for it here? Is it difference of opinion as to the best means to be employed to put down this rebellion? Is it as to the propriety of using force? Is the loyalty of Horace Greeley questioned, and was he not among the first of those who control and mold and fashion public opinion in this country to advocate the allowing the seceded States to go, and the recognizing their separate existence? While I do not desire to impeach the motives of any one, while I have no right to impute improper motives to any one, yet judging from gentlemen's actions, if you allow me to judge what is loyalty, I would assert this power, if I believed it to be necessary in other instances than the one now before the Senate. Judging from the haste with which gentlemen press bills that are calculated to destroy forever the Constitution of the land, to tear down the work of Washington and his revolutionary compatriots, to blot it out of the memory of man, if I were to be permitted to say who gave the greatest aid and comfort to Jeff Davis and his rebellious gang, whether it were the man in his army with arms in his hands, or the Senator in his place who advocated such propositions, I would say the Senator gave him much the greatest aid and comfort.

Mr. WILKINSON. I should like to ask the Senator a question.

Mr. CARLILE. Certainly.

Mr. WILKINSON. The telegraph announces that Governor Harris, of Tennessee, proposes to call the Legislature of that State together for the purpose of permitting them to repeal their ordinance of secession. Suppose Governor Harris should send General Pillow here to to fill the place of Senator Nicholson, who has been expelled, would the Senator from Virginia vote to admit him?

Mr. CARLILE. The Senator from Wisconsin [Mr. HOWE] answered that question well the other day.

Mr. WILKINSON. I asked it of the Senator from Virginia.

Mr. CARLILE. If General Pillow should be sent here, we will try and hang him as a traitor; he will not be allowed time to present his credentials to this body; he will be visited, before he reaches this capital, I trust, by the marshal of the United States, as the Senator from Wisconsin remarked.

Mr. WILKINSON. That does not answer my question. I should like to have the Senator from Virginia answer whether he would allow him to take a seat.

Mr. CARLILE. I say, sir, that I cannot conceive such a proposition will ever be presented to the Senate for its consideration. Gentlemen, I maintain, cannot, by any just argument, submit propositions here that violate all our ideas, not only of honesty, but of common sense.

Mr. WILKINSON. That does not answer my question. I should like to have the Senator say——

Mr. CARLILE. If that does not answer the question of the Senator, I confess that I am not capable of answering it. If the Senator will sit down and at his leisure put questions and suppose cases which never can arise, he must answer them for himself.

Mr. WILKINSON. Mr. President——

Mr. CARLILE. No, sir; I do not intend to be interrupted any further; with no disrespect whatever to the Senator, however. What is loyalty? I would inform the Senator from Massachusetts, for whom I entertain all kindness personally, but from whom I differ *toto cœlo*, that I have now before me a Republican paper, as I am told it is—a paper published in the State of New Jersey, and I have fourteen others, making fifteen altogether—the Senator has referred to thirteen affidavits; I have fifteen papers—Republican papers—edited in northern States, charging, and if I were a sworn juror I might say proving, disloyalty in the Senator, not only by the utterance of sentiments, but by acts; and one of the acts cited is in relation to the proposition which he gravely submitted in his place for the consideration of the Senate the other day, to blot out of existence eleven of the States of this Union. Sir, I shall take occasion, if ever that proposition comes before the Senate to be discussed, to speak of it at length; I shall not detain the Senate in regard to it now.

But, sir, the test of loyalty prescribed by the Constitution—the test of fidelity—is the oath to support the Constitution, which the instrument requires shall be taken by a Senator before he enters upon the discharge of the duties of his office. The Constitution having fixed the test of loyalty, the Constitution having made that the standard, I maintain that the Senate has no power to go beyond it or without it. Since the Senator from Massachusetts the other day asserted that loyalty was one of the constitutional qualifications, I have carefully read the Constitution, and I failed to find it anywhere in that instrument; but I do find that to which the Senator referred, the requirement to take this oath to support the Constitution, which the founders of the Government believed in their wisdom was the test of loyalty, the test of fidelity; and which, when taken, precluded this body from any further inquiry or investigation as to that point. If that oath is violated by an act inconsistent with it thereafter; if that oath is violated by that which is disloyal, that which is treason, that which goes to infidelity, then it is in the power of the Senate, under the other provision of the Constitution, to exclude him from his seat on this floor by expulsion.

The Senator from Pennsylvania [Mr. WILMOT] says that loyalty is unfaithfulness to the Constitution. Who is to judge of what is unfaithful to the Constitution, and who are unfaithful? It is a question that is strongly connected with our party associations and our party education. It may be that the Senator's party would consider princi-

ples and notions such as were entertained by the party to which, for the greater portion of my life, I was attached, when parties were in existence, unfaithful to the Constitution, while, if I were to be allowed to express an opinion and had a right to do so, I should be bound to say that I have discovered in the action of that Senator, in days gone by, what, in my judgment, was unfaithfulness to the Constitution, but which he, no doubt equally honest with myself, believed to be conformable to the Constitution.

But, sir, never, never can I consent with my vote and by my action to declare that the States of this Union shall hold subordinate to the pleasure of the Senate their right to representation upon this floor. No such provision, no such clause was ever put into the Constitution, and I venture to say that none such would ever have been put in any constitution adopted by the wise, great, good, and patriotic men who formed our present Constitution. He would best serve his country now in this the hour of her trial, in a legislative capacity, by doing (at the risk of all that is dear, at the risk of life itself, sacrificing even that if it is necessary,) that which is best calculated to preserve intact the Constitution of the country, the rights of the States, and the liberties of the people under it.

Mr. SHERMAN. The importance of the precedent we are about to establish will probably excuse me for detaining the Senate a few minutes in expressing my conclusions, and some of the reasons which have led me to them. The question is not, in my judgment, whether Mr. Stark is a disloyal citizen; the question is not whether he has committed a crime; but the question presented to us is, shall he, upon presenting his credentials in due form as a Senator from Oregon, be sworn in, or can any Senator, upon producing affidavits and testimony tending to prove his disloyalty, exclude him from being sworn? That, it seems to me, is the only question. The Constitution of the United States provides that every person holding a civil office shall be sworn. Every member of the Senate and House of Representatives must be sworn to support the Constitution of the United States. The Constitution does not say when, where, or by whom this oath shall be administered. So far as the Constitution is concerned, Mr. Stark might be sworn in Oregon before a judicial officer; he might be sworn at any time after his election or appointment. As to most civil and military officers, this is usually done by any magistrate having power to administer an oath. But the law of 1789 explains somewhat the provision of the Constitution. It declares that—

"The President of the Senate, for the time being, shall administer the said oath or affirmation to each Senator, who shall hereafter be elected, previous to his taking his seat."

This, then, prescribes the person who shall administer the oath, "the President of the Senate;" the time when, "after he is elected, and before he has taken his seat." There is nothing in the law, there is nothing in the Constitution to require a Senator to be sworn in open Senate. He may go into your chamber, sir, and you may administer the oath to him, and you may furnish the evidence of that to the Secretary. The administering of the oath is not a formal ceremony. The day is not fixed; the place is not fixed. The person is fixed by statute, and not by the Constitution. Now, the question arises, when a Senator duly elected, with all the qualifications prescribed by the Constitution, comes before you, and asks you to administer the oath, which by law you are compelled to administer, can a Senator of the United States, upon producing certain *ex parte* affidavits, prevent that person from being sworn and taking his seat? And can a majority of the Senators prevent you from complying with your legal duty to administer the oath? If so, a majority of the Senators who are present at any time can prevent any newly-elected member from taking his seat. Now, let us look at the argument of inconvenience, and I wish the attention of the Senator from Massachusetts especially to this.

We have here now but little more than a quorum of Senators. At the expiration of this Congress we shall have less than a quorum, less than the number which the Constitution declares shall perform any business; you will have then less than thirty-five members on this floor after this Congress expires if the seceding States are not in the mean time represented. May a bare majority of that body of Senators, only thirty, for only thirty will survive this Congress, decide whether or not they shall have any future associates in this body? May they exclude forever all the States that are not represented at that time? Suppose at the end of this Congress, or the beginning of the next, a Senator presents his credentials in due form; the Senate would then be composed of but thirty Senators holding over, less than a quorum: shall a majority of that number, less than a quorum, exclude all the newly-elected Senators, on the suggestion of any one, supported by *ex parte* affidavits, that that person is disloyal, unfriendly, dangerous to the Government?

Take the case of the House of Representatives, because the same constitutional provision applies to the House of Representatives as to the Senate, the Constitution declaring in each case that before a member takes his seat he shall swear to support the Constitution. Suppose objection is made to the loyalty of a member of the House of Representatives, when he is about to present himself for the oath, who shall try it? It is customary in the House of Representatives for the Representatives from Maine first to step up to the Speaker's desk and take the oath. Suppose some one should object that a member from Maine was disloyal, that he had said so and so, who would try the question of his loyalty? It seems to me that the argument of the Senator from Massachusetts, if he will only look to the practical, logical effect of it, would exclude any man that any Senator might choose to affirm was not loyal, and he might support that affirmation by *ex parte* testimony. I ask him if that would not be the practical effect of it in the House of Representatives?

Mr. SUMNER. The Senator puts a question. I answer him frankly by reading three lines of the Constitution of the United States, which I submit are a complete answer to everything he has said.

Mr. SHERMAN. I will hear them, but no doubt they are familiar.

Mr. SUMNER. "Each House shall be the judge of the elections, returns, and qualifications of its own members."

Mr. SHERMAN. Certainly.

Mr. SUMNER. "Each House." What is "each House?" It is a majority of each House. What are they authorized to do under the Constitution? To sit in judgment on the election of each member; to sit in judgment on the return of each member; to sit in judgment on the qualifications of each member. The Senate will bear in mind that under the Constitution that power is given to a majority of the House. The argument of the Senator is that great inconvenience will come if the Senate undertake to sit in judgment on the loyalty of a claimant for a seat; and why? Because, says he, that loyalty will be passed upon by a majority. But does not the Constitution of the United States provide that all these important matters are to be passed upon by a majority? Is the will of the Senator from Ohio wiser than the Constitution? Will the Senator from Ohio say that great inconvenience is to come in the Senate and House of Representatives simply from carrying out the Constitution of the United States? Further, I have argued from the beginning, and I still insist that among the qualifications under the Constitution of the United States is loyalty, and I insist that it is first and foremost among the qualifications, simply because the Constitution of the United States requires that every person before he can be an officer under it shall take the oath to support it. Therefore, that qualification, the qualification of loyalty, I say, is placed by the Constitution, expressly and solemnly, under the safeguard of an oath, and each body is to watch and see that that qualification is completely maintained.

Mr. SHERMAN. The Senator has repeated again what he said before, at least two or three times, yet he has not answered my question, and I do not intend to allow him to evade it. *When* shall the House of Representatives judge of the qualifications, elections, and returns of its members? When shall the Senate judge? Shall the House do it when they are in a confused, disorganized mass? If so, who shall vote on the question of the qualifications, elections, and returns? There is the point. I say that the Constitution contemplates that the Senators and members, after having been elected, shall be sworn in upon the faith of the papers presented, showing a *prima facie* case. They must be sworn in, and after they are sworn in the organization is complete, and then each House may judge of the elections, qualifications, and returns of its members; a majority of each House may then pass upon each case. But if the doctrine of the Senator from Massachusetts prevails, then thirty members, at the expiration of this Congress, may judge whether there shall ever be any other Senators of the United States; and the House of Representatives might be entirely disorganized. Sir, there is no practical way but to give due credit to the credentials of a member, and then when his right to a seat is disputed, to try that dispute in the proper mode. I dislike disloyalty. The evidence here has made a serious impression on my mind against Mr. Stark, probably as serious as on the mind of any one in the Senate; but I am not willing to adopt a principle which will disorganize Congress and give to a small minority a dangerous power, which might almost overthrow the Government itself.

Undoubtedly the Senate can protect itself against persons who would subvert the Government they swear to support; but I respectfully submit if this cannot be done directly, without seeking to do it under cover of the right to judge of the election, returns, and qualifications of your members. You admit that Mr. Stark was duly elected, or appointed; that the returns or credentials of his appointment are in due form, and that he has the qualifications prescribed by the Constitution. The Constitution having prescribed the requisite qualifications, you cannot add to them. It has frequently been decided that a State cannot, even in her constitution, add to them. Now, then, is there no other way to deal with a disloyal person except to add to the prescribed constitutional qualifications of a Senator the vague, uncertain, undefined one of loyalty? It seems to me that the Constitution points out a plain, simple way—we can expel a member. When such a motion is made, the evidence of his disloyalty becomes material. I feel bound to say, that upon the face of the papers, as they now stand, unexplained and uncontradicted, I would pronounce Mr. Stark disloyal. I cannot read the testimony of these *ex parte* witnesses, giving their statements full credit, without the deepest conviction that he is disloyal. But, sir, we are bound to give him a trial—a fair trial. We cannot condemn him on *ex parte* testimony, especially in the face of his solemn denial. We must give him an opportunity to cross-examine these witnesses, to show the mitigating circumstances—to explain or extenuate. To refuse this would be to deny him a privilege secured to the meanest criminal. Can we, in the mean time, give such effect to the accusation as to exclude him from his seat? Can we deny to Oregon the right of representation while her duly appointed Senator is pursuing his defense? Shall we adjudge him and punish him as disloyal, and exclude him until he has a chance to prove his innocence? This we know he cannot do without sending to Oregon. If the Senate pursue this course, his term will expire before he can have a fair hearing; so that a simple allegation of disloyalty, founded upon *ex parte* testimony, disputed by him, will have the effect not only to deprive him of his high office, but also to deprive Oregon of her constitutional representation here. Surely the Senate will not commit this act of injustice, when the power of expulsion is ample, plain, and always within your acknowledged power.

Let him take his seat; let him take the oath, administered either here or in your ante-chamber, wherever you please, Mr. President, because the law does not even prescribe the place where the oath shall be administered. Then allow him the usual facilities for his defense, and if he fails in making it, expel him. The Senator from Minnesota put a question to the Senator from Virginia with great confidence, as if it was conclusive, suppose Pillow should be appointed by Governor Harris, and come here as a Senator: what will you do with him? I will tell the Senator. As soon as he is appointed, and by his appointment becomes a member, I would expel him, even before he could come here and take the oath which the law requires him to take.

Mr. WILKINSON. I would ask the Senator whether we could expel a person from the Senate who was not a member of the Senate?

Mr. SHERMAN. When a person having the

legal qualifications is appointed, *he is a member of the Senate;* he franks documents; he is recognized uniformly by all the organs of the law as a Senator. From the 4th of March, when your term legally begins, you are a Senator of the United States, although the Senate may not meet for a year afterwards. At each successive Congress members are elected whose office takes effect from the 4th of March, and yet the House of Representatives does not meet until the first Monday of December following. I ask you whether in that *interim* the person elected is not a member of Congress? Certainly he is. You pay him as a member of Congress from the 4th of March; you pay him for time which expires before he is sworn. His oath does not fix the commencement of his office. The oath must be administered to him before he can take his seat and discharge his duties here; but he is still a Senator or a member from the constitutional period at which his office commenced. This doctrine is laid down in Jefferson's Manual, in all the books on parliamentary law, and has been so repeatedly decided in England.

Mr. DOOLITTLE. I would inquire of my honorable friend if the Senate did not in the case of LANE decide the other way?

Mr. SHERMAN. I think not.

Mr. DOOLITTLE. The Senate decided that Mr. LANE was not a Senator until he came here, and was qualified and took his seat; and therefore his being appointed a brigadier general after his election, and before he took his seat, could not disqualify him.

Mr. SHERMAN. That was not the proposition decided, as I understand it.

Mr. DOOLITTLE. That is the precise question that was decided.

Mr. WILMOT. I should like to ask the Senator from Ohio a question.

Mr. SHERMAN. I trust not too many. I say there is no difficulty about this matter. Gentlemen have attempted to raise a great many difficulties. It has been asked, "Suppose Floyd should come here: what would be done?" I say it is for this body to protect itself. The Senate may, by a two-thirds vote, expel any member, with or without cause. It is an arbitrary power given to us for our own protection. We can expel a member for an offense that he has committed ten years before. We can expel him because he is a horse thief, to take the strong case which has been put in the debate. In England, it has been done a dozen times. The only difference between our law and the English law in this respect is, that the House of Commons may expel a member by a majority; we cannot except by a two-thirds vote. If you will look at the historical incident connected with the provision of the Constitution, you will know the cause of the difference. Just about the time our Constitution was made, the House of Commons used the power to expel in an arbitrary way. It was necessary to give every political body the power to expel its members in order to preserve its dignity and character; but in order to restrain that power, the framers of our Constitution wisely limited it to two thirds of the body, so that a mere bare majority should not for any bad feeling or hatred or sudden impulse expel a member; but the Constitution gave to each body the power, by a two-thirds vote, to expel a member, and without limitation. There is no limitation to the power. It is laid down in May's Parliamentary Practice, a recognized book on parliamentary law, that—

"Expulsion is generally reserved for offenses which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit on Parliament itself. Members have been expelled as being in open rebellion, as having been guilty of forgery or perjury, or frauds and breaches of trust, of misappropriation of public money, of conspiracy to defraud, of corruption in the administration of justice, or in public office, or in the execution of their duties as members of the House, of conduct unbecoming the character of an officer and gentleman, and of libels and various other offenses committed against the House itself."

There is no limit to the power to expel. Whenever a man by his personal conduct becomes so offensive to the body that he brings discredit upon it, it is the duty of the body to expel him. It has been done over and over again in England. The House of Commons have expelled for all these causes.

But it has been said here in argument, and it has seemed to be assented to, that this body cannot expel a member for things that occurred before his election. That is untrue. It has been done in many cases, and a celebrated case, that is familiar probably to many of you, is the case of Robert Walpole. Robert Walpole was expelled for corruption, an offense committed three years before his election. I have the Journal of the House of Commons here before me, and as it is a very interesting case I may point out the bearing of it. Robert Walpole was secretary of war in 1707, and was continued until the change of Administration, which I believe was in 1710. It seemed that in 1707 Walpole had a corrupt collusion with some one, and retained for himself, or rather for a friend of his, an interest in a contract made in the war office. This was in 1707. In 1710 there was a change of administration, and a new Parliament was elected, of which he was a member. The allegation was made in 1711 that Walpole had been guilty of corruption, and this resolution was introduced into the House of Commons:

"A motion being made, and the question being proposed, that Robert Walpole, Esq., a member of this House, in receiving the sum of five hundred guineas, and in taking a note for £500 more, on account of two contracts for forage of her Majesty's troops quartered in North Britain, made by him when secretary at war, pursuant to a power granted to him by the late lord treasurer, is guilty of a high breach of trust and notorious corruption.

"An amendment was proposed to be made to the question, by leaving out these words: 'and notorious corruption.'"

The amendment was agreed to; and then the question being put upon the resolution, it was decided in the affirmative by a vote of 205 to 148. This was immediately followed by a resolution of expulsion, which was adopted.

Thus Robert Walpole was expelled for an offense committed four years previous, although, in the mean time, he had been elected by a constituency to Parliament, and no man was ever found to complain of this precedent. There are many cases that I have had looked up, but there is one other case that is familiar to every Senator, to which I will merely allude. I refer to the case of Wilkes, of which I have here a short abstract. The history of the case is familiar. John Wilkes was a member of Parliament, and while a member of Parliament he wrote a libel, for which he was expelled. He was then reëlected again, by Middlesex county, I believe, came in and took his seat, and the House expelled him again for the same cause He was the third time elected, but at that election another man was put up against him, Luttrell, who received a few votes. Luttrell contested the election, and contended that as Wilkes had been twice expelled for the libel, and as votes cast for Wilkes were illegal and void, therefore he, Luttrell, though he received but one hundred and thirty-odd votes, was entitled to a seat in the House of Commons. The House, by an arbitrary majority, allowed Luttrel to take the seat on the ground that a vote cast for a man who had been expelled was illegal and void. It was never denied that the House of Commons had the right to expel Wilkes time after time and time after time; but the point was made by many leading statesmen that Parliament could not say that the citizen had not the right to vote for any man he chose. That point was made by Junius in one of his scathing letters. This was a case where the House of Commons went beyond the mere expulsion of Wilkes, and decided that a vote cast for Wilkes was illegal and void, and they allowed Luttrell to come in. After some ten or fifteen years of stormy parliamentary history, the resolution allowing Luttrell to come in was expunged from the record of the House of Commons, and it was upon that expunging resolution that our own distinguished citizen, now dead, based his proceeding in a celebrated case in this very body.

I have shown you, Senators, that there is an easy remedy for this matter; and I say here now, that if any of the traitors who have borne arms against the Government come here and offer to take seats while I am a member of this body, the very moment I hear of their election or appointment, that moment I will exercise my right, if no other Senator does, to offer a resolution to expel them from this body. That is the plain, simple, constitutional remedy which we have the power to enforce. That we can do; but do not, I beg of you, tread upon the right of a State to elect whom it chooses. Let him be sworn, if you do not act on his case before he comes here, as you may do with an open rebel. Even after he is sworn you can expel him. If you should now establish the precedent that when an objection is made to the right of a Senator to take his seat here, that question shall be tried before he takes his seat, you do more to revolutionize this Government than any act that has been done by any of the men who are now in arms against the Government. That is my deliberate judgment; and with that opinion, although my convictions in regard to Mr. Stark are strong, although I cannot see how any man living in Oregon could utter the sentiments he is said to have uttered, yet I will not deny to Oregon her representation here. On the other hand, I desire that these papers shall be recommitted to the Judiciary Committee, that there the Senator from Oregon may be allowed to explain and produce all the evidence he can; and if he should fail to explain away these facts and circumstances, let the Judiciary Committee then report upon the merits of the case; but in the mean time, let the State of Oregon be represented on this floor by two Senators.

Mr. HALE. I do not want to occupy much time, but I desire to notice one suggestion of the Senator from Ohio. He says that this course of keeping a Senator out, which he states as being by a single member, would disorganize the body. That has been done; it has been done while I have been a member, and there was not a word said at that time about its being disorganizing. In the instance to which I allude, a member was kept for a long time outside the door of the Senate.

Mr. SHERMAN. Did not that arise in a case where there was a question as to whether the person had been legally elected, whether his qualifications were within the terms of the Constitution, or whether the returns were valid upon their face? Was it not one of that class of cases?

Mr. HALE. I will state the case; it is familiar to many old members of the Senate—the case of Mr. Dixon, of Kentucky. Mr. Dixon came here and presented himself with his credentials in due form. There was no objection to his credentials or to his qualifications. It was said, however, that he was not entitled to the seat, but that Mr. Meriwether, who had been previously appointed, was entitled. Mr. Meriwether was not here contesting the seat, and yet Mr. Dixon was kept out for weeks until the case was decided. I only mention the fact to show that the Senate have heretofore adopted this very course, and it was not suggested that it was revolutionary at all. I think the Senator from Ohio, who usually states his points with great clearness, and—I do not say it to flatter him—makes his positions exceedingly plain, has fallen into an inconsistency in the exposition he has now made. The Senator from Minnesota put a question to the Senator from Virginia which the Senator from Virginia modestly, and I have no doubt candidly, said he could not conceive of an answer to; but the Senator from Ohio has undertaken to answer it, and it seems to me—I say it, of course, with all respect to him—that he would have stood quite as well if he had put on the same shield that the Senator from Virginia did, because he has fallen into an inconsistency, and a very great one, I think. He says that if Tennessee were to send Pillow here, he would expel him before he got here; that is, he would expel him without a hearing, behind his back, and upon common rumor.

Mr. HOWARD. And before he had taken the oath.

Mr. SHERMAN. That has been done in many cases. Sometimes articles of impeachment against an officer are filed on common rumor. The House of Representatives has a dozen times started committees of investigation on common rumor. We often institute inquiries on common rumor. On the allegation being made that Mr. Pillow was elected a member of this body, I would at once institute an inquiry, and if it was proved that he had been guilty of treason against the Government, I would certainly vote to expel him.

Mr. HALE. I know that allegations are made on public rumor; but judgment is not generally entered upon public rumor; there must first be an inquiry. The Senator would have to be pretty quick if he instituted an inquiry and gave a trial before General Pillow got here to take the oath. He says that if Pillow were elected, he would expel him before he got here. He believes Mr. Stark, upon the evidence, to be disloyal, and he will not prevent him coming in and taking the oath, but will resort to his expulsion afterwards.

It seems to me there is an inconsistency in that. I rose now only to protest as one individual against the idea being entertained for a moment that it is a matter of indifference, when a man comes up to take the oath of office and take a seat as a Senator, whether he is a friend or an enemy of the Constitution. Stripped of the phraseology with which the proposition has been decked out, the position of the Senator from Ohio is nothing more nor less than that it is a matter of supreme indifference whether a Senator who comes up to take the oath is a friend or an enemy to the Government. I contend that it is not indifferent, but that we have a right to make the inquiry, and that here is the place, and the only place, to make it. If, when the facts are known upon which you can act, you forbear to act before the oath is administered, you are, in my humble judgment, estopped from acting hereafter. I candidly say that that will be the rule of my action. If, knowing these facts, believing as the Senator from Ohio says he does on the face of the papers, on the evidence now before the Senate, that the Senator from Oregon is disloyal—if, with that evidence before them, the Senate vote to let him take the seat, (for they mean the same thing; when he takes the oath he does take the seat,) they will be, in my humble judgment, morally estopped from any inquiry hereafter.

Mr. TRUMBULL. The amendment of the Senator from Massachusetts brings the Senate to a direct vote upon the question whether Mr. Stark shall be sworn in as a member of the Senate without any investigation whatever as to the truth of the charges of disloyalty which have been exhibited against him—charges of disloyalty arising out of letters, out of sworn affidavits, and out of testimony of one witness examined and cross-examined before the Committee on the Judiciary. This amendment presents that precise question. Of course, those who vote against the amendment will say that he is entitled to be sworn without any reference whatever to this state of fact. The Senator from Ohio has rightly stated it; but in order to maintain his position he has assumed some most extraordinary doctrines, and among the most extraordinary, probably, is the position that a Senator may be sworn anywhere. Does the Senator from Ohio seriously contend that a justice of the peace may pass upon the age, upon the citizenship, and upon the inhabitancy of a man elected a Senator? He says a justice of the peace may swear him, and that he is a Senator.

Mr. SHERMAN. Is there anything in the Constitution or anything in the law that requires the election, returns, and qualifications to be decided before he is sworn? If so, I should like to ask the Senator how a member of the House of Representatives could be sworn?

Mr. TRUMBULL. There are some things that we understand without having a positive law or provision in the Constitution to provide for them. When the Constitution says that each member shall be sworn, we all understand what is meant by being sworn; and when in the same connection it declares that each House shall be the judge of the qualifications, election, and returns of its own members, we know that it would be impossible for either House to be a judge of the qualifications, election, and returns of its members, if a man could become a member simply by taking the oath before a justice of the peace. The Senator has assumed the most—I was about to say extravagant position—I do not mean it in any offensive way at all; but it strikes me as very extravagant to say that a person elected is a member immediately. The Senator asks, do not such persons have the franking privilege? Did they get the franking privilege by virtue of the Constitution? Did they get the franking privilege by virtue of the law giving the right of franking to a member? No, sir. It required a special act of Congress authorizing a person to frank before he was admitted to a seat; he did not get it by virtue of being a member; and the old law, as it first passed, did not allow the franking by a person from the 4th day of March, as it now does. The law at this very time allows a member to frank for nine months after his term has expired. Is he therefore a member of Congress nine months afterwards? The terms of the members of the House of Representatives will all expire on the 4th day of March, 1863, and yet every one of them has a right to frank documents until December following. Does the Senator from Ohio therefore hold them to be members of Congress after the 4th of March? He surely does not contend for any such thing.

But he says this would be an extraordinary power; there will be but thirty Senators here at the end of this Congress, and those thirty Senators can forever prevent any other Senators coming in; and the Senator from Virginia is shocked at the idea that less than a quorum can keep the Senators of States out. Your own doctrine will allow less than a quorum to keep them out. The doctrine advocated by the Senator from Ohio allows less than a quorum to do it. Thirty-five members is a majority of the Senate; that is a quorum, is it not? Twenty-four is two thirds of thirty-five. Twenty-four Senators could expel all above the thirty-five that came here and took the oath and were admitted to seats, one at a time. Are you not shocked that you are living in such a Government as that? That is the Constitution of the United States. You talk about a majority acting from caprice; and even my friend from California is alarmed at the idea that a majority may prevent a man from taking his seat here. Only twenty-four Senators, on your own doctrine, may expel a member. We are not to presume either that two thirds of a quorum, or that a majority of a quorum, are to be actuated by caprice, by political considerations. Sir, when the people and the representatives of the States become so corrupt as that they are incapable of self-government; when they are so unmindful of their duty as to act from such considerations, your whole Government has gone, and self-government is a failure.

But the Senator from Ohio talks about expelling Senators before their admission, and I should like his attention for a moment on that. He is going to expel Pillow before he gets here, and the Senator has looked up the precedents on that point. I have not searched for them, but I venture the prediction that the Senator cannot produce a precedent to show that a man was ever expelled before he was admitted. It is an absurdity upon its face. I will not believe it until I see it. I have not looked for them, but I challenge the production of a precedent where a legislative body has gone through the farce of expelling a man that had never been there I venture to predict that it cannot be found. He must be a member before you can expel him. You cannot put him out until he gets in.

But it is said that you must not examine the credentials, and the Senator from Ohio wants to know how you could ever organize and carry out that notion. Why sir, there is some sort of comity about these things; there is a sort of understanding in the House of Representatives, I believe, to swear in the members who present themselves. They are frequently sworn in the House without presenting their credentials at all. I believe I have seen a Senator sworn in this body on a statement made by a member of the Senate that the gentleman had been elected and that his credentials had not arrived. In the House of Representatives the members come together, those claiming to be elected, and they qualify, and afterwards they purge the body of those who have no right to seats; but they often refuse to admit members upon the credentials, to begin with. Has the Senator from Ohio forgotten the broad seal case of New Jersey? Has the Senator from Ohio forgotten the case after case in the Senate of the United States that has been read here and exhibited to the Senate, where the credentials have been referred before the man was sworn?

Mr. SHERMAN. I am very happy that the Senator mentions the case of New Jersey, because I believe it is the admitted judgment of nearly all impartial and intelligent men that that was a high-handed outrage. I was going to school about that time, and I know it was so regarded then over the country as a high-handed outrage that they overlooked the great seal of the State of New Jersey. It is considered to this day one of the political crimes of the old Democratic party.

Mr. TRUMBULL. The Senator objects to the precedent in the New Jersey case. Does he object to half a dozen precedents that have occurred in the Senate? There is a difference between the Senate and the House of Representatives, as has been well remarked by the Senator from Pennsylvania, [Mr. WILMOT.] The Senate is a permanent body, and might adopt different rules from those adopted in the House of Representatives without inconvenience. I shall not, however, go into a discussion of the New Jersey case at this time. The Senator from Ohio thinks that was a political decision, and he has not much respect for it. I know that my friend from New Jersey has not much respect for it.

Mr. TEN EYCK. Allow me a word.

Mr. TRUMBULL. I heard the Senator's remarks upon the subject the other day; but I will yield to him.

Mr. TEN EYCK. I am very loth indeed to interrupt the Senator; it is against my practice to do so; but as the point which he now makes concerns my own State so intimately, I desire to say a word. In that case, against the opinion of many very able men, and I shall not refer to any other in this connection but the late President John Quincy Adams, who argued the question most fully and satisfactorily, the House of Representatives refused to give the members from New Jersey, who had the credentials under the broad seal, their seats, and that matter was kept, during the whole session, in dispute, and eventually referred to a committee, who, during the following vacation, examined into it. The Senator will also permit me to say that that was considered such a gross outrage upon the rights of the State that not only old-fashioned Whigs, but old-fashioned Democrats, turned in with one accord and returned those men who had the credentials and had been refused their seats, by a majority of between seven and eight thousand the next year. All men, with one accord, considered it an outrage upon the rights of the State and upon the symbols of her sovereignty; and it was such an expression of opinion as that Congress, from that day to this, has regarded the expression of the public voice in that respect.

Mr. TRUMBULL. I think the Senator from New Jersey is mistaken in supposing that the people of New Jersey changed their politics on account of that matter. It occurred at the time of the change of politics in the country. There was a great overturning everywhere, even where members were not refused their seats. If he will look at the election in that period he will find that not only in New Jersey, but some other States, the Democracy of that day did not sustain themselves before the people. We all know that Mr. Van Buren went out with a whirl in 1840. I do not think it was owing to that decision; and I am not now arguing to sustain that position. I merely alluded to it as one case. While great men, as the Senator has well remarked, were of opinion that the men having the broad seal ought to be admitted in the first instance, other great men thought differently; and a majority thought differently, and refused to admit them. That was the opinion of a majority of the House of Representatives; and there were perhaps as great men on the one side as on the other.

But the analogy between the House of Representatives and this body does not hold, because we are a permanent body; and, as I said, the same difficulty in organizing does not arise here as in the other House. In this body, credentials have been repeatedly referred. Here is the place for a member to be sworn; and he cannot be a Senator until he is admitted to his seat here. The taking of an oath before a justice of the peace would not make him a Senator. It is not until his election and his qualifications have been passed upon by this body, that he is a Senator. We pass upon them when we admit him to take the oath and take his seat here; and then, and not till then, is he a Senator of the United States.

I do not propose going over the ground which I occupied the other day; but I cannot forbear saying a word to the Senator from Virginia [Mr. CARLILE] who, when a question was put to him in regard to excluding a man from a seat here who had been convicted of crime, wanted to know if there was not a law that would exclude such a man. Can a law alter the Constitution? Does not the Senator from Virginia contend that the constitutional qualifications of age, inhabitancy, and citizenship, are the only qualifications that can be imposed upon a man? And now he is willing to admit that you may by law disqualify a Senator. The Senator from California [Mr. McDOUGALL] the other day, when he was arguing this question, spoke of a person coming here having the constitutional qualifications of age, inhabitancy, and citizenship, and laboring under no legal disqualifi-

cation. Can there be a legal disqualification? Does the Senator admit that? If he does, he gives up the whole ground of power.

Mr. McDOUGALL. It is not necessary to inquire into that.

Mr. TRUMBULL. If he admits that Congress may by law, as it has done, pass an act declaring that a judge who has been bribed to give a decision shall hold no office of honor, trust, or profit under the Government—if he admits that law, passed soon after the Government was organized, to be a constitutional act—then he does admit that some power in this Government may put a disqualification upon a man's taking a seat here besides age, inhabitancy, and citizenship.

Mr. CARLILE. The Senator referred to me. Will he allow me to say a word?

Mr. TRUMBULL. Let me finish the idea I am upon. And if he admits that Congress may do this by an act, thus declaring a person incapable of holding an office, I ask him if he can avoid the admission that the Senate may do it, which, by the terms of the Constitution, has plenary and full power to pass upon the election, qualifications, and returns of its members? If Congress can enact a disqualification—and the Senator from Wisconsin [Mr. HOWE] has stated that case too, of which he seemed to speak rather cavalierly—if Congress can put a disqualification upon a man, which is neither as to his age, nor his citizenship, nor his inhabitancy, I want to know if the Senate, which by the very terms of the Constitution has full power, may not itself put the disqualification?

Mr. CARLILE. I desire now, before the Senator leaves that point——

Mr. TRUMBULL. I shall be through in a moment. It is not adding to the qualifications prescribed by the Constitution; but it is inflicting a punishment for crime. It is refusing a seat to a man who is guilty of infidelity to his Government, if he is a disloyal man. If he is a traitor, by the act of the Senate, which is made the exclusive judge, it is making it a part of the punishment for his treason that he shall never desecrate this Hall by his footsteps.

Mr. CARLILE. Will the Senator now allow me to say a word?

Mr. TRUMBULL. Certainly.

Mr. CARLILE. I understand the Senator to contend that, because Congress has the constitutional power to enact a law excluding persons guilty of crime from office, the Senate, one of the branches only of Congress, without law, can do what Congress only can do by law—one branch of Congress can do without law what it requires two branches to do by law, which requires the concurrence of both branches and the approval of the President. I believe that Congress has the constitutional power to enact a law; but I do not believe that the Senate, one of the branches of Congress, without law, has the power to add to the qualifications of a Senator mentioned in the Constitution. That I understand to be the argument of the Senator from Illinois.

Mr. TRUMBULL. Mr. President, we shall see how few words will answer the Senator's position. If the law is unconstitutional, has it any validity? If the Constitution of the United States entitles a man to take a seat here who is thirty years of age, nine years a citizen, and an inhabitant of the State that appoints him, can a law change that Constitution? When the Senator says that you may by law prevent such a person from taking a seat, he gives up the whole question of power. If you can do it by law, may you not do it by a vote of the Senate? Is a law which is opposed to the Constitution of any more value, or of any more validity, than a resolution of the Senate? I did not say that the Senate could pass a law; but I said the Senate had the exclusive power to pass upon the election, returns, and qualifications of its members; and I say that the Senate has the power to determine upon the infamy, upon the treason, or the crime, whatever it may be, of a man, that disqualifies him to hold a seat in this body. Why, sir, if a law of Congress did exclude a man from holding an office under the Government, the Senate would not be bound by it. The decision of the court would not bind this body. That is the very case put in 3 Cowen, to which I referred the other day. I repeat again, it is not by passing the law, but it is by using all the power which the Constitution of the United States has placed in the Senate; and it is not adding to the qualifications of the member. I trust my learned friend from Wisconsin will make a distinction between qualifications for office, and a punishment for treason, or for other crimes.

Mr. DIXON. Mr. President——

Mr. SHERMAN. Before the Senator proceeds, I trust he will allow me to refer to the Manual upon one point. The Senator from Illinois says that a Senator is not a Senator until he is sworn, and that a member is not a member until he is sworn. He has criticised my position upon that subject. I am happy to be sustained by the Manual prepared by Jefferson, and also by a great number of cases referred to in it. It declares expressly:

"Privilege from arrest takes place by force of the election; and before a return be made a member elected may be named of a committee, and is to every intent a member, except that he cannot vote until he is sworn."

This is supported by very many cases, and it is in accordance with our own law. A member is a member from the time he is duly elected until the time the Constitution fixes as the end of his term of office. He cannot take his seat here until he is sworn; and that is fixed rather by our law than by the Constitution.

Mr. TRUMBULL. He is a *quasi* member for some purposes. He is not a member in the constitutional sense, with the privileges of a Senator. He may be sufficiently a member to prevent his arrest on his way to the Capitol. I think that that perhaps may be so.

Mr. DIXON. Mr. President, the claimant of the seat from Oregon is charged with disloyalty to the Government of the United States. The testimony upon this subject is before the Senate in the report of the Committee on the Judiciary. That testimony is of a very peculiar character. It is extremely explicit; and it goes directly to the opinions of the claimant upon the claim of the Government of the United States upon him as a citizen. I shall not, at this time, take up the attention of the Senate by referring at length to that testimony. I have already done so to a certain degree. The Senator from Michigan [Mr. HOWARD] has done so at considerable length.

The Senate will recollect that the claimant from Oregon, according to this testimony, took the ground that the government of Jefferson Davis was the true government; that he owed allegiance to that government, and that he would fight for that government. Were those his sentiments? Is that testimony correct? Is it true that the Senator ever uttered those sentiments, and that he now entertains them? What is the ground he himself takes upon that question? This is sometimes spoken of as an *ex parte* hearing. The claimant from Oregon has been heard upon this question. He has had an opportunity to deny the truth of these statements, and to give to the Senate of the United States, and to the people of the country, his views upon this question. Has he done so? His statement is before us. What has he said? He has not denied that he uttered those sentiments. He has not denied that at this very moment he entertains those sentiments. He has given us a partial denial. I will not accuse that gentleman of any want of candor. I will not say that he has not met this question as he ought to have met it; but sir, I say his denial is only partial; it is a negative pregnant. He denies a portion and he admits a portion. I think it was his duty to come before the Senate and people of the United States, and to state what his opinions were. He might have said, "I am loyal to the Government of the United States." Has he said so?

He has said that he is willing to take the oath. Why, sir, that is merely saying that he is willing to take the office. He knows it is necessary to take the oath before he can take the office. Of course, he is willing to take the oath. He presents himself here for that purpose. He claims the office, and he tells us that he is willing to take the oath of office. We knew that before he made to us that statement.

Now, sir, what are his opinions? What does he believe? Is he true to this Government at this time, or is he loyal to the government of Jefferson Davis? That is what I wish to know. The Senator from Ohio has given us his opinion upon this question. He says that in looking upon this testimony, although he is in favor of admitting the claimant from Oregon, he believes him to be disloyal to the Government. He says he cannot read this testimony without coming to the conclusion that the claimant of this seat is disloyal to the Government of the United States. I confess, when I heard that from my friend from Ohio, I was astonished. Why, sir, what is disloyalty? The Senator from Pennsylvania has asked that question, and he has asked it in a manner that seemed to show there was some difficulty in deciding what disloyalty was. What is it? It is infidelity to the Government of the United States; it is moral treason; it is only one step short of actual treason. A disloyal man has only to carry out his purpose and his wishes, and he becomes a traitor in fact. That is disloyalty. The Senator from Ohio says the claimant is disloyal, and still he says he could not now exclude him. He has a somewhat short method of regulating the difficulty. He says he would expel him before he comes here; he would expel him before he takes his seat. I do not think it necessary to resort to such extreme measures as he proposes.

I find, in what has been said by another distinguished Senator on this floor, who has also advocated the doctrine that the claimant ought to be admitted, what I think is the true doctrine laid down there. I allude to the remarks of the Senator from Maine [Mr. FESSENDEN] a few days ago. That Senator, in my judgment, admitted the whole case. He admitted that there might be a case in which it would be proper to refuse admission to a claimant before taking his seat. He said it must be an extreme case. Of course it must. It must be a clear case. If the Senator from Ohio is right, this is a clear case, for we are acting upon the claim of a disloyal man, who is a moral traitor to the country. What did the Senator from Maine say?

"While I say now that I am not prepared to admit that in no case would I not exert it, and while I say that there are many cases in which I would exert it, come what would, yet this is not one of them."

And now he dwells on the question which was raised by the Senator from Wisconsin [Mr. HOWE] in his able and ingenious speech the other day:

"Suppose for instance that one of the leaders of this rebellion should present himself here; suppose the State of Tennessee should come back to the Union being freed of those who now control it, and that a Legislature properly elected should send General Pillow here as a Senator from that State: I would vote that he should not be allowed to take the oath, because, though not a convicted traitor, he is an admitted traitor. I would not allow him to come here by my vote; and if Senators ask me upon what principle I act, I tell them I act upon my own individual responsibility as a Senator of the United States."

That is the principle upon which I act also.

"It is for me to judge both with regard to expulsion and with regard to admission; and it is between me and my conscience, myself and my God, who will judge me for the manner in which I discharge my duties to the country."

He goes on:

"While I admit that there may be cases in which it may be necessary and justifiable that the majority should exercise that power, I say it is a precedent fraught with much danger to our institutions, to the body of which we are members, and to all legislative bodies, that a power should be exercised by a mere majority to exclude anybody from a seat who comes with the regular constitutional qualifications. It being a power so dangerous, so liable to abuse, from the exertion of which so many wrong inferences may be drawn, and from which so much injury may follow to the country, I think it a duty not to exercise that power, except in extreme cases, cases so palpable that they address themselves at once to the consideration of every man and to the good sense and propriety of feeling of the country, where every one sees and feels that the extremity of the case justifies the strength and power of the action."

I admit the correctness of those views. Unless in a clear and extreme case, I think this power ought not to be exercised. That it exists is admitted in this speech. It is an existing power; but it is to be used with great care, with great caution, and upon the individual responsibility of each Senator. Now, sir, what is this case? The Senator from Ohio declares this claimant to be disloyal, and he himself does not deny it. If disloyal, he is as unfit to hold a seat upon this floor as the leader of the southern rebellion or any one of his followers. I make no distinction. I know no distinction between the leader of the rebellion and any one of his followers in arms and a claimant to a seat upon this floor who justifies and upholds them. Entertaining this view, considering this to be the extreme case which the Senator from Maine has supposed, I shall vote for rejecting the claimant upon the threshold.

Mr. McDOUGALL. I am not disposed to delay the vote upon this question; but the point made

by the Senator from Ohio struck me with a great deal of force, and as being exactly true; and that my own view of it may be distinctly understood, I wish to make a few remarks to the Senate.

I think the confusion about this whole matter has arisen from confounding office with institution into office. An office is a right. In England, when the Crown issues its commission, the party receiving it under the seal of the Crown, is clothed with office, and he has a perfect right to institution. If it were the law of England that a judge appointed to the common bench, would have to receive the oath at the hand of the chief justice, he having his commission from the Crown, would be a judge of the common bench, with a full right in the office; his right would be perfect, for the reason that his oath would be a voluntary act within his own power. There would be no limitation on it outside of himself; and therefore the right would be perfect in him. The chief justice might deny or refuse to administer the oath, and then he would have to appeal to the courts for a mandate of institution, his right being perfect in the first instance.

Now, I say, in this case the power that may clothe a Senator with office having fully acted, he has the full right, which is the office, in him; and although he may not be instituted, he has a right to be instituted; and although he may be wrongfully denied institution, if it were any other office the courts would administer the right. The Senator from Oregon having been clothed with a right only requiring institution by taking an oath, which he has a right to demand shall be presented to him and administered, is altogether a Senator, so far as the right is concerned, because the condition rests in his own volition, and he may assert the right at his pleasure.

There is another mistake. We do not expel a person from this Senate—we expel him from his office; and he being in office when he is clothed with the commission, we may vacate the office that is in him by our constitutional authority. There is no one familiar with the law of offices but understands that an office is a mere right, and that right is not qualified by the mere process of institution into office, which he may demand, as I have said before, at the hands of the courts, and the courts are bound to administer it. The Senator having been appointed and commissioned by as high an authority as if he had a Crown commission, he having the right of office, why is he not, then, subject to our jurisdiction by the constitutional authority to eject him from office—not from the Senate, but from his office—for good cause shown? It strikes me that the doctrine advanced by the Senator from Ohio is one of the strongest arguments that has been advanced in the course of this controversy. We have jurisdiction over him the moment he is clothed with the senatorial office.

Another word. I merely rose to state these propositions, for I think they will be recognized by every lawyer in the Senate. Now, as to the term "qualification" as it is used in the Constitution, it may mean constitutional qualification; it may mean qualifications established by law. I do not propose to discuss the question presented by the Senator from Illinois, for it is not important in this controversy, and it is not involved in it; but "qualification" is, like all other terms used in the Constitution, a word that has some definite meaning. What is the definite meaning of "qualification?" The Constitution has said itself what "qualification" shall consist of. What is left to the Senate? To inquire into the fact of qualification, not into the law of qualification. The law has been established by the Constitution. We may inquire into the fact; and if it should appear that the Senator was not qualified for years, or for citizenship, or for any other cause assigned by the Constitution, the fact being ascertained, we could act upon the question simply as one of qualification. But here comes a party with all the constitutional qualifications. We have jurisdiction over him now to eject him from office, for he is in office; that is, he has the office, although not instituted. I say that Senators, if they think they have good cause—for that rests in their own consciences, and they may judge as they think justly—may move to expel him, not from his seat here, but from the office with which he has been clothed by the Governor of the State of Oregon; and if they can get the constitutional majority they can succeed; but they cannot by indirection accomplish a result expressly provided for by the terms of the Federal Constitution.

Mr. WILSON, of Massachusetts. I rise to ask the Senator from New York if he intends to have the vote taken to-night upon this subject. If he does, I am ready to sit here. If not, I desire before the Senate adjourns to take up a bill which I regard as very important to be acted upon to-night.

Several SENATORS. Let us take the vote now.

Mr. HARRIS. I believe, so far as I can ascertain, it is the desire of the Senate to close this case to-day. With that belief, I shall press the matter to a vote.

If I were to consult my own inclination, Mr. President, at this late hour and this late period in the debate, I should not say a word; but the views and doctrines which have been presented in this discussion are of such a character, so unsound, in my judgment, so extraordinary, so mischievous in their character and tendency, that I feel constrained, impatient as I know the Senate to be, to make some suggestions in reference to those arguments. It has been said by an old writer that power is ever at war with its own boundaries, and the truth of that remark has been most emphatically illustrated in this debate. A strenuous effort has been made on the part of distinguished Senators, distinguished lawyers, to thrust into the Constitution a power that its framers never put there, and never designed should be found there.

Mr. President, the Constitution was the work of thirteen distinct, independent, sovereign States. In order to form a national Government those States each surrendered a portion of its sovereignty. They undertook to create a national Legislature, one branch of which should represent the people of the country, the other branch of which should represent the sovereignty of the States. That branch is the Senate. It was agreed in this surrender that each State should have two members in this branch of the Legislature: the greater should not have more; the least should not have less. It was agreed, too, in instituting this national Government that the States might themselves, in the exercise of their own State authority and sovereignty, choose for themselves their own members of this body. All the restrictions they put upon themselves were that they should not choose a man who was under thirty years of age, that the Senator whom they should choose should have been nine years a citizen, and at the time of his election should be a resident of the State where he was elected. These three qualifications, these three restrictions, the States chose to impose upon themselves; so that now, if a man fails in any one of these qualifications, though he may have been in form elected, he is not in fact elected; the election is void; it is against this restriction which the States have put upon themselves in framing the Constitution. It is perfectly competent for this Senate, whenever a Senator presents himself here, to have the matter first referred to a committee to inquire, and afterwards themselves to judge upon the question whether or not the Senator has been in due form elected; whether his credentials are in the proper form as evidence of that election; and lastly, whether or not the Senator presenting himself comes within these qualifications which the Constitution prescribes. This, sir, is all that we find upon the subject of qualifications within the limits of the Constitution.

But it is said that a Senator must be loyal. I agree to that. I agree that he must be loyal, although it is a term in respect to which a good deal has been said, and properly said, and upon the definition of which I apprehend no two Senators would precisely agree. The Senate say to the States sending Senators here, "We insist that they shall be loyal to the Government." The State says, "We agree to that; but what shall be the test of loyalty? How shall it be determined whether a Senator is loyal? We intend to determine that question for ourselves in the first instance; we are not to be questioned as to our right to elect any man coming within the qualifications specified in the Constitution; we choose to reserve to ourselves the right on the subject of loyalty to elect any man we please; but we will agree to this: that when our Senator presents himself in the Senate, and offers to take his seat as the representative of our sovereign authority, he shall take an oath; he shall furnish to the national Government a guarantee that he will be true to the Constitution;" and hence it is that the Constitution provides that when the Senator presents himself, he shall go to that desk, and here, in the American Senate, in this holy of holies of our nation, he shall swear true allegiance to the Government that he is about to serve. This, sir, is the test of loyalty that the Constitution prescribes, and it prescribes no other test.

But the Senator from Illinois, he that stands foremost in the Committee on the Judiciary, has urged that there is a necessity that we should apply a further test. Sir, I object to this law of necessity when discussing constitutional questions. What, asks the Senator—and he seems alarmed and shocked at the thought—is it possible that the Senate of the United States is bound to receive into its bosom a convicted traitor, a convicted felon, a man of infamy? Why, sir, that inquiry of the Senator was fairly answered the other day by the Senator from Virginia. Some things, says the Senator from Illinois, are to be presumed; and it is to be presumed that the Senate will not, through caprice or prejudice or injustice, reject a member who presents himself. He made use of that very argument to-day. Sir, may not the same presumption be made in favor of the sovereignty of a State? May it not be presumed that a State will not send here its convicted felon instead of sending him to the penitentiary? May it not be presumed that a State will not send here its convicted traitor instead of sending him to the gallows? May it not be presumed that a State will never send here a man covered all over with infamy as with a leprosy? Sir, a constitutional question like this, of the gravity and importance of this, is never aided by such extreme illustrations.

Other Senators have attempted to illustrate this by still more extreme cases. One Senator supposes the case of a woman being sent here by a State Legislature, and another a lunatic, and another a horse thief. Sir, this is not the way to discuss constitutional questions of this kind. I shall not enlarge upon it. The Senator from Illinois, in his first argument upon this question, told us he was sure there must be such a power in the Senate as to exclude a man for disloyalty or infamy, or because he had been convicted of crime, not, as he admits, as a ground of disqualification—for he concedes that he cannot find that in the Constitution—but, to use his own language, as a punishment due to his crime and the infamy of his character. That, it seems to me, is a most surprising and illogical argument for a sound lawyer to present upon such a question as this.

But he says Congress has legislated on the idea that it has the power to exclude a Senator. Sir, I deny it. It is true that in 1790, immediately after our Constitution went into operation, Congress passed a law declaring that no judge who should be guilty of the charge of bribery, should afterwards hold any office of profit or emolument; and in 1853 Congress passed another law declaring that no member of Congress who should be guilty of bribery, should afterwards hold any office of profit or emolument. But, sir, what is the amount and what is the effect of these laws? They only operate upon that class of offices within the control of the legislative power. The very authority that the gentleman cited, the decision from the State of New York, the language of the chancellor that he cited in the case of Barker *vs.* The People, expressly states that the Senate of the United States is the exclusive and supreme judge of the qualifications of its own members, and so far as by the terms of the law such an office as that would be embraced, the law is defeated by the Constitution itself.

But there is another class of Senators who have undertaken to show that, by the papers before the Senate, this applicant for the seat is convicted of what they are pleased to call disloyalty. Well, sir, I know a gentleman, a distinguished gentleman, who has a great fancy for getting definitions of the term "common sense." He carries a book with him, and wherever he has a convenient opportunity, he asks the gentleman with whom he happens to be in conversation what is his definition of common sense; and he takes his definition and records it. He makes a volume of the definitions of common sense. Now, I apprehend that we should have just about as great a variety of definitions of the terms loyalty and disloyalty as

my friend has of the term common sense. I do not know what the Senate would deem a sufficient amount of disloyalty to exclude a man from taking a seat in the Senate. Certainly the Constitution gives us no light or aid upon that question. I apprehend that there are all degrees of disloyalty. There are Senators here—I do not mean to be at all personal, and I do not mean to make a remark or intimate who I have in my mind—but, judging from what I have heard here in the course of the present session, I should feel very much inclined to think that there was a class of Senators here who thought they stood on a higher plane of loyalty than others who may feel themselves to be as loyal to the Government as they. There are all degrees and shades of loyalty; and what amount of disloyalty Senators would have a man guilty of in order to deprive him of his constitutional right to take a seat here, I have been unable to ascertain from all that I have heard.

Senators think they find in these affidavits the evidence of disloyalty, of a want of fidelity to the Government; and nothing in this debate has surprised me so much as to find eminent lawyers—the gentleman from Pennsylvania, [Mr. WILMOT,] who has been a judge, and I know from what I see of him has been a good judge; the Senator from Michigan, [Mr. HOWARD,] who is an eminent and distinguished lawyer, and the Senator from Connecticut, [Mr. DIXON,] discussing these affidavits and undertaking to spell out from them evidence of treason; at any rate of disloyalty. I mistake those Senators, if any one of them would convict the most miserable vagrant that walks our streets of the crime of petty larceny upon these affidavits. I do not believe there is a Senator who would do it; and yet those Senators are willing to vote here that this applicant for a seat, representing the sovereignty of Oregon, is to be excluded from this Senate, that that sovereign State is to be in part disfranchised upon such affidavits as these, affidavits that any man who knows and appreciates the value of evidence would reject upon the most petty trial.

Mr. DIXON. Will the Senator allow me a moment?

Mr. HARRIS. Certainly.

Mr. DIXON. I would remind the Senator that the distinguished Senator from Ohio, who argues upon his side of the question with so much ability, is also convinced by these affidavits that the claimant is disloyal.

Mr. HOWARD. I will ask the Senator from New York one question in this stage of the proceedings. I desire to ask whether he entertains any doubt, first, of the authenticity of the affidavits to which he refers, and the authenticity of a paper which is not an affidavit, which is also referred to; and, second, whether he has any ground in his own mind of rational doubt of the substantial truth of the averments contained in both of these papers? After he has answered these questions, we may talk about loyalty.

Mr. HARRIS. Let us look at the affidavits, and see. I am disposed, in view of that inquiry, to criticise these affidavits. In the month of February the leading affiant, Mr. Hull, says that he "heard the said Benjamin Stark make use of the following language, in substance, at the post office in Portland."

Mr. HOWARD. I do not wish to interrupt the mode in which the Senator may see fit to answer the question; but my first inquiry related to the authenticity of these papers.

Mr. HARRIS. I have no reason to doubt the genuineness of these papers. It has never been questioned. Here is a letter addressed to Governor Seward, which has been read as a part of the evidence in this case, unauthenticated, unverified, unsworn to, which no lawyer would regard as evidence, of course. The first leading affidavit is that upon which I was about to comment. It is the affidavit of Mr. Hull, in which he says that Mr. Stark made use of this language:

"If there is to be any war between the North and South all my property is for sale at fifty cents on the dollar, and I will go and help the *South* fight. The palmetto flag is my flag. The southern confederacy is the only legal government in existence; that the United States Government is broken up; that Jeff Davis is fighting in a good cause, and it will be impossible to defeat him."

Now, observe Mr. President, this conversation, these statements alleged to have been made by the claimant of the seat, are alleged to have been made in Portland, in the State of Oregon, and to have been made in the month of February. Now, sir, Jefferson Davis on the 21st of January was in his seat in this Senate. The confederation was not formed until late in February. The news of secession had not reached Portland, when it is alleged this affidavit was made. The Senator from Oregon [Mr. NESMITH] told us that on the 12th of February, at Acapulco, in Mexico, on his way to Washington, he heard the intelligence of the secession of South Carolina. Sir, the man who swears to this affidavit has made an egregious mistake. It is an unreliable document.

Mr. NESMITH. With the permission of the Senator from New York, I desire to correct that. It appears reported in the Globe that I stated that I heard that on the 12th of February. I said on the 12th of January.

Mr. HARRIS. But, sir, still the records show that on the 21st of January Jefferson Davis was here. Now, this person who makes this affidavit swears that in February this applicant said he was going to join the southern confederacy, and that Jefferson Davis was fighting in a good cause. Sir, it is not true. It bears intrinsic evidence of its inaccuracy. In this connection let me read what a standard author, whom all lawyers recognize—I am reading from Stephens's Blackstone—says of this sort of evidence:

"How far mere words spoken by an individual, and not relative to any treasonable act or design then in agitation, shall amount to treason, has been formerly matter of doubt. We have two instances in the reign of Edward IV, of persons executed for treasonable words: the one a citizen of London, who said he would make his son heir of the *Crown*, being the sign of the house in which he lived; the other a gentleman, whose favorite buck the King killed in hunting, whereupon he wished it, horns and all, in the King's belly. These were esteemed hard cases, and the Chief Justice Markham rather chose to leave his place than assent to the latter judgment. But now it seems clearly to be agreed that by the common law and the statute of Edward III, words spoken amount only to a high misdemeanor, and no treason; for they may be spoken in heat, without any intention, or be mistaken, perverted, or misremembered by the hearers. Their meaning depends always on their connection with other words and things. They may signify differently, even according to the tone of voice with which they are delivered; and sometimes silence itself is more expressive than any discourse."

Now, what was the occasion when those words were uttered; what was the subject of the conversation; what was the connection in which the words were uttered? It is to be remembered that the person in question claiming the seat as Senator from Oregon avows himself to have been a Breckinridge Democrat; and, according to my recollection of the times, there were many such sentiments as are contained in these affidavits uttered by that class of men, who, up to the fall of Sumter, were loud in their expressions of what would here be called disloyalty; but from that time we heard no more of them. There are men now prominent in our Army, fighting the battles of our country, as loyal and true to the Constitution as any member of this body, who up to that period were loud in their expressions of sympathy for the South, and their readiness to aid and assist the South in any way they could; but from that time forward, we heard no more of them. Their attachment to their country, their devotion to the good old flag of the country would not allow them to suffer that indignity.

It will be remembered that all these expressions are alleged to have been made before any knowledge of that occurrence. What does the Senator himself say? It has been criticised. In my judgment, he says all that an honorable man could say under the peculiar circumstances of this case. Here were bitter political opponents seeking to defeat him in his attempt to take his seat in the Senate. They undertook to make affidavits, affidavits of what had occurred months and months before. How could they recollect the very words? Some of them say they cannot. How could they recollect the circumstances? They were affidavits made under circumstances which repelled the idea of their strict accuracy. Now what does the Senator say? I think it is all he ought to be called upon to say to meet these allegations, these loose affidavits:

"It is due to myself, however, that I should state that I have examined all the papers referred to by the committee, and that I find them, without a single exception, to emanate from my bitterest political opponents.

"While I cannot undertake to recall"—

these affidavit-makers undertook it—

"all that I may have said in private conversations during the past twelve months of earnest and often heated discussions of public affairs, I do most solemnly declare that in a forum competent to try and determine the issue, I am able to prove the allegations against my loyalty to be utterly unfounded; that, in many important particulars, the declarations of my assailants are false; that in others my language has been perverted and wrested from its true intent; and that in every respect the papers referred to are calculated and were designed to sustain a theory founded upon an opinion alike unjust to my true sentiments and discreditable to the candor of my accusers."

Now, sir, I do not know what a man could say in answer to such affidavits. I have asked myself the question, what could I do, conscious as I am of my loyalty to the Government, believing there is not a man here who is more loyal than myself, who feels a stronger devotion to the Constitution of his country, who would sacrifice more than myself—I do not know what more I could say if similar affidavits were made about me. I am aware that a criticism has been made upon the latter part of this communication. There are expressions there which, in my judgment, are very heterodox in politics. Views are presented in that communication to which I could never assent. But, sir, it is nothing but heresy in politics. I do not regard them as furnishing any ground upon which, if the Senator from Oregon were on trial, we could convict him even of disloyalty.

Then, sir, how does the matter stand? We have a Senator presenting himself here confessed to have the constitutional qualifications. It is objected that he is disloyal, and *ex parte* affidavits are presented for the purpose of showing that disloyalty. They furnish the most unsatisfactory and suspicious kind of evidence. They are, as I have said, evidence upon which we would not rely to convict for the most petty offense; and yet the Senate is asked to exclude this Senator from his seat, to deny Oregon its right of representation here by its own chosen representative, to put this indignity upon a sovereign State upon these unsatisfactory affidavits. It seems to me, sir, that by doing so we should, as has been well said, inflict a wound upon our Constitution greater, more severe, more to be deplored, than anything that the rebels are now doing. I agree with the Senator from Missouri [Mr. HENDERSON] that we cannot afford to do this. It was well remarked by him, the other day, that we can put down this rebellion, we can extinguish this attempt to overthrow our Government, without inflicting any such wound upon the Constitution, and I most sincerely hope that a majority of the Senate will view it in that light.

Mr. HOWARD obtained the floor.

Mr. FESSENDEN. If my friend from Michigan will excuse me a moment, it is quite evident we cannot finish the debate to-night. Many members have gone away, and there should be a full Senate when it is decided; and, therefore, if it is agreeable to him, I will move an adjournment.

Mr. TRUMBULL. I think we have got as full a Senate as we have had at any time.

Mr. FESSENDEN. We cannot get a vote to-night.

Mr. TRUMBULL. There is a quorum here.

Mr. FESSENDEN. There is a quorum here, to be sure; but many Senators have gone away who would like to vote upon it.

Mr. TRUMBULL. If we adjourn now, this subject will take all day to-morrow, and will interfere with other business. I do hope it will not be agreed to.

The PRESIDING OFFICER, (Mr. RICE in the chair.) Does the Senator from Maine make a motion to adjourn?

Mr. FESSENDEN. Yes, sir; I make that motion.

Mr. HALE called for the yeas and nays; and they were ordered.

Mr. CARLILE. I desire to say that my vote will be governed by a disposition to accommodate the Senator from Michigan.

Mr. HOWARD. I have but little to say upon this subject; and I do not ask the Senate to adjourn on my account.

Mr. CARLILE. If he desires it, I shall vote for an adjournment; if not, I shall vote against it.

Mr. HOWARD. The Senate can consult their own convenience. I do not desire an adjournment.

The question being taken by yeas and nays, resulted—yeas 21, nays 20; as follows:

YEAS—Messrs. Browning, Clark, Davis, Fessenden, Foster, Grimes, Howe, Johnson, Kennedy, Lane of Indiana, Latham, McDougall, Nesmith, Pearce, Powell,

Rice, Saulsbury, Sumner, Willey, Wilmot, and Wilson of Missouri—21.

NAYS—Messrs. Anthony, Carlile, Chandler, Cowan, Dixon, Doolittle, Hale, Harlan, Harris, Henderson, Howard, King, Pomeroy, Sherman, Ten Eyck, Thomson, Trumbull, Wade, Wilkinson, and Wilson of Massachusetts—20.

So the motion was agreed to; and the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February* 26, 1862.

The House met at twelve o'clock, m. Prayer by the Chaplain, Rev. THOMAS H. STOCKTON.

The Journal of yesterday was read and approved.

CORRESPONDENCE WITH RUSSIA.

The SPEAKER laid before the House a message from the President of the United States, transmitting a copy of instructions from Prince Gortchakoff to Mr. De Stoeckl, the minister of his Imperial Majesty the Emperor of Russia, and the copy of a note from the Secretary of State to Mr. De Stoeckl relative to the adjustment of the question between the United States and Great Britain, growing out of the removal of certain citizens out of the British mail steamer Trent; which were referred to the Committee on Foreign Affairs, and ordered to be printed.

CLERKS OF INTERIOR DEPARTMENT.

The SPEAKER also laid before the House a communication from the Secretary of the Interior, transmitting a list of the clerks employed in that Department; which was laid on the table, and ordered to be printed.

CHAIRMANSHIP OF COMMITTEES.

Mr. VAN WYCK. The near approach of the time when the army of the Potomac must be put in motion renders it necessary I should ask to be excused from serving further as chairman of the committee on Government contracts. Some weeks since I informed my colleagues I should pursue this course when the event arrived. It was my judgment that I should resign my place entirely on the committee, so that another could be appointed; but they insisted I should continue one of its members, devoting such time to its service as I could spare. With the sentiments of warm and generous friendship so often manifested on their part, I do not feel at liberty to disregard their wishes.

The few days before the army moves will be required to close up some unfinished investigations. I need not say I will always feel a lively interest in the results of the committee, and I will cheerfully give in its aid what of time may not be required in the field.

It has yet much to do, although the unflinching integrity and untiring watchfulness of Secretary Stanton relieve it of many cares.

I would also ask to be excused from serving as chairman of the Committee on Revolutionary Pensions.

In the darkest hour of the Republic, when disaster had overtaken our armies, at the close of the extra session of Congress, nearly fifteen hundred of the brave, loyal men of my district gathered around the drooping flag of our country and pledged themselves to die in its defense. They came from the mountains and valleys through which the warrior Brandt and his savage horde echoed the war-whoop in the days of the Revolution; from the birth-place of De Witt Clinton and William H. Seward; from the headquarters of Washington by the Hudson. They followed me to the field, and I must be with them in the day of battle.

If it be true that the principles I profess have contributed to produce this horrid war, I desire no compromise but to defend them on the field and seal them with my blood.

This is my reason for the request, which I trust the House will grant.

The SPEAKER. The Chair does not see how the House can entertain that question. The committee on Government contracts can elect a chairman in the absence, or in case of the resignation of its chairman. The gentleman from New York does not, as the Chair understands, propose to be excused from service on that committee. But he does ask, if the Chair is not mistaken, to be excused from service on the Committee on Revolutionary Pensions, for the reasons indicated.

Mr. VAN WYCK. I desire to decline acting on that committee, but did not feel at liberty to withdraw from it altogether without consultation with my colleagues.

The SPEAKER. Does the gentleman ask to be excused from serving on those committees?

Mr. VAN WYCK. No, sir; only to be excused from acting as chairman.

The SPEAKER. The Chair does not see that the House can act on that.

NEW YORK CUSTOM-HOUSE OFFICERS.

Mr. VAN WYCK offered the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Government contracts be directed to inquire into the amount of moneys received by the Federal officers in the city of New York by virtue of their offices; also, as to the ownership and rents of the bonded warehouses; also, the terms, considerations, and profits of the labor contracts and general orders contracts, for the storing, hauling, delivering, &c., of foreign goods in the city of New York; when made, by whom, and who are now interested in the same.

VOTES RECORDED.

Mr. MORRILL, of Vermont. Having been absent yesterday, engaged on the Committee of Ways and Means, when the vote was taken on the bill making an additional article of war, I ask leave to record my vote.

There being no objection, Mr. MORRILL's vote was recorded in the affirmative on the passage of the bill.

Mr. SHELLABARGER made a similar request.

There being no objection, his vote was in like manner recorded in the affirmative.

Mr. ROBINSON made a similar request.

There being no objection, his vote was in like manner recorded in the negative.

Mr. NOELL made a similar request.

There being no objection, his vote was in like manner recorded in the negative.

Mr. SMITH made a similar request.

There being no objection, his vote was in like manner recorded in the negative.

Mr. NORTON made a similar request.

There being no objection, his vote was in like manner recorded in the negative.

Mr. COX made a similar request.

There being no objection, his vote was in like manner recorded in the negative.

The SPEAKER suggested that, there being no objection, all members who did not vote yesterday on the bill referred to might have their votes recorded.

FOREIGN AND COASTING TRADE.

Mr. BEAMAN offered the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Commerce be instructed to inquire and report to this House whether any further legislation is necessary to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States; and that they report by bill or otherwise.

ORDER OF BUSINESS.

Mr. COX. I call for the regular order of business.

The SPEAKER. The regular order of business is the call of committees for reports.

NANCY RICE.

Mr. RICE, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Revolutionary Claims be discharged from the further consideration of the claim of Nancy Rice, widow of Moses Rice, deceased, and that the same and accompanying report be transferred to the Secretary of the Interior for adjustment, the case being provided for by existing law.

THANKS TO GENERAL HALLECK.

Mr. VOORHEES asked the consent of the House to introduce a joint resolution of thanks to Major General Halleck.

Mr. LOVEJOY. I object.

Mr. VOORHEES. I ask that the resolution may be read.

Mr. LOVEJOY. I object to that.

Mr. VOORHEES. I think I have the right to have the joint resolution read for information.

The SPEAKER. The resolution can only be here at all by unanimous consent, and cannot be read if objection be made.

Mr. VOORHEES. I hope no one will object to that.

Mr BAKER. I object.

VIRGINIA CONTESTED ELECTION.

Mr. WORCESTER. I now call up the case of S. Ferguson Beach, contesting the seat of Charles H. Upton as a Representative from the seventh congressional district of Virginia.

I am instructed by the Committee of Elections to report for the consideration of the House the following resolution:

Resolved, That Charles H. Upton is not entitled to a seat in this House as a Representative of the seventh congressional district of Virginia.

Mr. RIDDLE. I ask the gentleman to yield to permit me to offer an amendment to that resolution.

Mr. WORCESTER. Certainly.

Mr. RIDDLE. I move to amend by striking out the word "not," in the first line of the resolution.

Mr. WORCESTER. Mr. Speaker, this is a case from the seventh congressional district of Virginia. Both the contestant, S. Ferguson Beach, and the sitting member claim to represent that district in this House. The sitting member claims his right to a seat here in pursuance of an election which he alleges was held in that district of the State of Virginia, on the 23d of May last. He appeared at the special session in July last, as the member elected from that district. His name was entered upon the catalogue of members, and he was sworn in as a member of this House, and participated in its organization. By what right or in virtue of what pretensions his name was permitted to be entered upon the roll of members, the Committee of Elections have not been advised.

Some days subsequent, during that session, a resolution was introduced by the gentleman from the metropolitan district of Ohio, [Mr. Cox,] instructing the Committee of Elections to inquire into his eligibility. That resolution was referred to the Committee of Elections, and they did, to some extent, enter upon the consideration of the case; but in consequence of the shortness of the session, and the amount of business before the committee referred to us by the House, a conclusion was not reached upon the case prior to the adjournment, and the further consideration of it was postponed until the commencement of the regular session.

At the commencement of the present session, on the first day of the session, the contestant presented his memorial to the House, which was by vote of the House subsequently referred to the Committee of Elections. This memorial alleges that the contestant was elected to a seat in this House, from the seventh congressional district, on the fourth Thursday of October, 1861. That memorial I will read, for the purpose of bringing the facts of this case to the knowledge of the House, and that the House may understand the precise issues that are now about to be tried. The following is the memorial:

To the honorable the House of Representatives of the Congress of the United States:

The memorial of S. Ferguson Beach, of the city of Alexandria, in the State of Virginia, respectfully represents: That in consequence of the revolutionary action of the convention of Virginia, which assembled at Richmond in February last, elections for members of the Thirty-Seventh Congress, on the day fixed by law for such elections, were obstructed and prevented throughout most of the congressional districts of the Commonwealth.

Such was especially the case in the seventh district, composed of Alexandria and adjacent counties, where, owing to the presence of large military forces, and to the operation of other influences scarcely less powerful, not a single poll is believed to have been opened.

By an ordinance of the convention of Virginia, lately sitting at Wheeling, passed on the 20th day of August, 1861, it was ordained that in all those districts where elections had thus been prevented, as aforesaid, elections should be held on the fourth Thursday of October then next; and it was also thereby provided, that voters who should be unable to vote at their usual places, by reason of the presence of those in armed opposition to the Government, should be allowed to vote in any county of their district.

Under the provisions of this ordinance, and in response to the proclamation of Francis H. Pierpont, Governor of the Commonwealth, calling upon the loyal citizens, where ever it was practicable, to avail themselves of said provisions, polls for the election of a Representative for said seventh district were regularly opened in the city of Alexandria on the day appointed.

A small vote was cast, made up by voters from the counties of Alexandria, Fairfax, and Prince William, all, substantially, for your memorialist, as will appear by a regular and formal certificate of election which he now holds.

Your memorialist further represents, that upon the assembling of the present Congress, in extra session, on the 4th day of July, 1861, one Charles H. Upton, confessedly a citizen of, and voter in, the State of Ohio, at the presidential election in the November previous—neither then nor now a citizen of the State of Virginia—not even a *bona*

fide inhabitant of Virginia, so far as can be ascertained—on the fourth Monday of May last appeared as the representative of said seventh district.

No one appeared to contest his right, since no person interested thereunto had any intimation whatever that any such right was pretended. On the contrary, it was matter of the most common notoriety that no election of a Representative, either in form or substance, had been held in a single precinct of the district.

The urgent necessity for an immediate organization of the House precluded, at that time, any inquiry into minor matters, and the said Upton was accordingly admitted and sworn in as a member, without examination of his credentials.

The grounds upon which the said Upton claims to represent the loyal population of said district are entirely unknown to your memorialist and to all those who participated in the election lately held, on the fourth Thursday of October.

It is believed a slight examination will show that the claim rests upon no foundation whatever, and it is respectfully submitted that a decent regard for the rights and feelings of those interested requires that such examination shall be made.

On behalf, therefore, of them and of himself, your memorialist desires that the House, by its proper committee, will make due inquiry in the premises and dispose of the subject-matter in such way as the rights and interests of all concerned may appear to require.

S. FERGUSON BEACH.

ALEXANDRIA, VIRGINIA, *November* 29, 1861.

MESSAGE FROM THE PRESIDENT.

A message, in writing, was received from the President of the United States, by Mr. NICOLAY, his Private Secretary.

Also a message notifying the House that he did, on the 25th instant, approve and sign bills of the following titles:

An act (H. R. No. 209) making additional appropriations for the support of the Army for the year ending 30th of June, 1862; and

An act (H. R. No. 240) to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States.

CONTESTED ELECTION—AGAIN.

Mr. WORCESTER. A resolution was adopted by the House on the 9th of December, requiring the contestant to serve upon the sitting member notice of the grounds upon which he claimed his seat here; also fixing the time when the sitting member should serve upon the contestant an answer; also stating the grounds upon which he claimed his seat.

Subsequent to the passage of this resolution, the contestant served upon the sitting member, as the grounds upon which he claimed the seat in controversy, a copy of his memorial. To that memorial, or to the specifications therein contained, the sitting member, within the rule prescribed by the House, served upon the contestant his answer, to a portion of which I will ask the attention of the House:

"That there was a condition of things in Virginia, as you set forth, in the month of May last, and at the regular period for holding congressional and other elections, which made any attempt to adhere to the national standard, and rally the loyal people of Virginia thereto, both difficult and dangerous is most true; but that there was no poll opened in the seventh district at that time is untrue; and in answer to your carefully worded charge, that 'not a single poll is believed to have been opened,' I will, at the proper time, of which you will be duly notified, prove by the testimony of the conductor and one or more of the commissioners for holding the election at Ball's Cross Roads, in Alexandria county, that a poll was then and there, on the 23d day of May, being the fourth Thursday of May, regularly opened for a member of Congress.

"As to the proclamation of Governor Pierpont, to which you refer, I call upon you to lay it before the Committee of Elections, that they may see whether it gave the citizens of Alexandria any authority for the step they took, or whether it referred only to 'vacant and unrepresented districts.'

"As to the election held in the city of Alexandria on the fourth Thursday of October last, I have only to say that I took no notice of it, nor those concerned in it. But if the newspapers of the day are to be relied on, and there were, as I believe, more than five hundred Union citizens then in Alexandria; and as less than one hundred and fifty votes are said to have been cast on that day, it leaves the gratifying inference to me that a large majority of the loyal citizens there regarded the movement to embarrass me as both ungenerous and illegal.

"What you say about my former residence in Ohio is immaterial; but when you represent that 'one Charles H. Upton was not even a *bona fide* inhabitant of Virginia, so far as can be ascertained, on the fourth Monday of May last,' I am compelled to believe that you have not made very strenuous efforts to 'ascertain' this very important fact. At any rate, I will produce testimony to remove all obscurity upon this point."

The law regulating contested elections provides that to furnish authority to a person to appear in this House in the character of a contestant, he should serve upon the sitting member the grounds upon which he claims to contest his right to a seat in this House. These grounds must be stated specifically. The law further provides that the sitting member, after receiving the notice of the contestant, shall serve upon the contestant his answer, either affirming or denying the several allegations contained in the specifications. And he is required further, if he has grounds besides those furnished in the specifications of the contestant, to set forth those grounds specifically in his answer.

It will be seen from the specifications of the answer that the sitting member denies only two material facts alleged in the notice of the contestant. He denies the allegation that he was not a *bona fide* inhabitant of the seventh congressional district on the fourth Monday of May last; and he also denies the allegation that there was no poll opened in that district in any precinct; but he says in reply that a poll was opened for members of Congress at the precinct of Ball's Cross Roads. He does not state that he has any other ground for occupying the seat that he now holds, except the fact that he was at that time an inhabitant of the State of Virginia, and that a single poll was opened at a single precinct in the seventh district. He does not allege that he received a single vote at that precinct. He does not allege that he has any certificate of election, or that he has any evidence that any vote was cast for him.

The resolution which was referred to the Committee of Elections at the special session refers to them two questions for their consideration. First, was the sitting member *eligible* as a member of this House? Second, was the election under which he now claims to hold his seat regular, or conducted in conformity to law?

In answer to the first inquiry, the Committee of Elections found that the sitting member, prior to October, 1860, was a resident and inhabitant of the State of Ohio; that in the month of October, or prior thereto, he had engaged in conducting a daily newspaper in the city of Zanesville, and that at the State election of that State, held in October, 1860, he appeared at the polls and voted.

Mr. BINGHAM. I desire to inquire of my colleague whether the Committee of Elections have not decided that this question of residence was outside the case; in other words, whether they have not decided that he was an inhabitant of Virginia?

Mr. WORCESTER. We have admitted that he was an inhabitant of the State of Virginia in May; and that admission is contained in the report of the Committee of Elections.

Mr. BINGHAM. I understand, then, that there is no question as to his eligibility—that the Committee of Elections has decided in his favor on that point, and that he was an inhabitant of Virginia.

Mr. WORCESTER. That is so. I was stating the facts contained in the report. The committee, in their report, state that they find that the sitting member, prior to the month of October, 1860, as I have already said, was an inhabitant of the State of Ohio, and voted at the election in that State of that year. That the fact of his voting implied that he was a resident of the State of Ohio, and for at least one year previous. The committee also find that subsequently to the month of October, 1860, he returned to his former residence in the State of Virginia, where his family had resided; and that, from 1860 up to the time of election in the month of May, 1861, he was a resident and an inhabitant of the State of Virginia.

The revolutionary condition of that part of Virginia where this district is located was brought into question both by the memorial of the contestant and the answer by the sitting member. The committee have endeavored to ascertain as far as possible the facts which could be shown to have existed to prevent or obstruct the election in this congressional district in the month of May last, as alleged by the contestant. It appears from the current history of events that a revolutionary convention, called in the State of Virginia in the month of February, 1861, adopted what was called an ordinance of secession. That ordinance, in terms, repealed the ratification of the Constitution of the United States by the State of Virginia, and resumed to the State all the rights and powers granted by that ratification. Immediately thereafter the State of Virginia claimed to be independent, and the secession convention passed another ordinance recognizing the independence of the confederated States. During the month of April, of the same year, and not long after the passage of the ordinance of secession, the State of Virginia became, by the act of its convention and its Executive, a member of the southern confederacy. On the 24th of April, of that year, an ordinance was passed suspending the election of members of Congress, which ought to have taken place on the following 23d of May. It was provided by the law of Virginia passed in 1853 that the election for Congress should take place at the time I have named. The question to be considered by the committee was the effect of that ordinance of secession and the subsequent ordinance of the convention upon this congressional district.

It is made the duty of each State under the Constitution of the United States to pass laws fixing the time, place, and manner of holding elections for members of Congress. The Constitution in that respect is mandatory upon each State. If a State has adopted a law regulating the election of members of Congress, that law may be repealed by the same power that has enacted it. The convention of Virginia claimed to exercise in what it did the powers of a Legislature. Its acts and its ordinances were received, respected, obeyed, and had the force of laws in all that portion of Virginia east of the Blue Ridge. All of the executive officers of the State, from the Governor down to the constable, lent their aid to enforce these ordinances. The courts gave the sanction of their judgments, and issued their processes for the execution of these ordinances. The archives of the State, the great seal, and all the emblems of authority were in the possession and under the control of this convention. These ordinances were respected and obeyed by the people in all the eastern portion of Virginia. The Federal officers in that part of the State were either compelled to resign or were driven off, and no person was allowed to exercise the rights or to perform the duties of an office in that portion of the State without first renouncing his allegiance to the Government of the United States and taking an oath of fealty to the new government. From what the committee can understand, it appears that at the time referred to the law for the election of members of Congress was not only in terms suspended by the convention, but the election officers appointed to carry that law into effect were superseded. There were, therefore, no officers who could execute it.

The Committee of Elections fully admit that all of these acts of that convention were revolutionary; that they were usurpations; that the people of the eastern portion of Virginia were neither legally nor morally bound to obey them. The very term usurpation, however, implies that the party who usurps has the control and possession of the rights and powers which he has usurped. The question is simply one of fact—not whether it may have been legally right for the people of the eastern portion of Virginia to elect a member of Congress in the month of May last, but whether it was legally, physically possible for them to do so. But the sitting member claims—and he must claim in order to support his case—that this elective law of 1853 was not only in force, but that he was elected in all respects in pursuance of that law. The Constitution of the United States prescribes the qualification of a person entitled to a seat as a member of this House. It requires that he shall be of a certain age; that he shall be an inhabitant of the State from which he comes; and that he be a citizen of the United States for a certain length of time. The Constitution of the United States makes this House the judge of the qualification of its own members; and when the House sits judicially on the qualification of its members, the Constitution of the United States is the rule by which its decisions are to be governed. The Constitution provides that each State shall prescribe the time, place, and manner of electing members of Congress, until such time as the State laws may be altered or amended by the Congress of the United States. When this House sits in judgment upon the election and return of one of its members, the law of the State from which the member comes, and under which he claims to hold his seat, is the rule by which it is to be governed.

The question now to be considered is whether the law of 1853, under which the sitting member claims his seat, was in force at the time; and if in force, whether the sitting member was elected in accordance with the provisions of that law. The laws of the several States in regard to the